

IN THE MATTER

of the Social Security Act
1964

AND

IN THE MATTER

of an appeal by **XXXX** of
Christchurch against a
decision of a Benefits
Review Committee

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

Mr G Pearson - Chairperson

Mr K Williams Member

Mr C Joe - Member

Hearing at Christchurch on 11th August 2017

Appearances

The Appellant in person

For Chief Executive of the Ministry of Social Development: Janeen Hume

DECISION

Preliminary

[1] The essential issue in this case is that the appellant resides in social housing, he was paying \$91 per week as rent, and his payments increased to \$328. The Ministry accepted that the lower rate applied due to an error in its calculations.

[2] There were essentially two elements that the Authority considered when dealing with the appeal;

[3.1] whether the determination that the rent should increase to \$328 was correct; and

[3.2] whether some form of support was available to Mr XXXX to deal with his changed circumstances.

[3] The way the Authority approached the issue was to go through the legal basis for the determination of the rent increase, and explore potential support available to Mr XXXX. The Authority did so in a relatively informal hearing where the Ministry presented its position and Mr XXXX engaged with the various issues.

[4] The Authority determined that the rent determination applied the law correctly. The Authority also determined that there does not appear to be any other form of assistance that was available to Mr XXXX at the time his rent increased. Mr XXXX was clearly an intelligent and well informed person who followed the analysis, and agreed these conclusions were inevitable.

Discussion

The level of rent

[5] There was no dispute that the Ministry has the obligation to calculate the level of rent and notify Housing New Zealand of the amount of the rent. Housing New Zealand has discretion as to the point in time when an increase in the level of rent takes effect.

[6] In terms of calculating the level of rental there is a relatively complex matrix of legislative provisions contained in the Housing Restructuring and Tenancy Matters Act 1992, including ss 3, 73, 74, 104-110, 113, 115 and 116 and Schedule 2 of that Act. Schedule 9 of the Social Security Act 1964, Schedule 1 of the New Zealand Superannuation and Retirement Income Act 2001, the Residential Tenancies Act 1986 (s 24) also have some relevance. Given that the Authority examined the applications of the sections and the appellant agreed with how they applied it was not necessary to examine each of the provisions closely. It is sufficient to note that the critical conclusion in the application of the provisions is that after determining the household income as provided in s 107(2) of the Housing Restructuring and Tenancy Matters 1992, and the prescribed elements set out in Schedule 2 of the Act, the appellant had an accessible income of \$848.79 per week. The rental payment allocated \$384.76 of that amount as being below the prescribed threshold. It followed that 25% of that amount was due for rent, and in

addition the further income of \$464.03 was also contributed to rent, but at the rate of 50% rather than 25%. This gave the total figure of \$328.21.

- [7] The maximum contribution for rent was the market value of the rent. The appellant was paying rent close to the market rate. The practical effect was that a large portion of the appellant's after-tax income was subject to a deduction of 50% allocated to rental liabilities. In these circumstances, the appellant ceased work, given the very modest amount available to him after paying income tax, having 50% of much of his earnings allocated to rent, and inevitably having expenses associated with working.
- [8] After examining the figures and the calculations the appellant was satisfied that the figures and the calculations were correct.
- [9] Under the legislative requirements the Ministry was required to notify Housing New Zealand of the correct amount of rent, and Housing New Zealand was obliged to defer implementation of the new rate of rent for at least 60 days. In fact Housing New Zealand gave notification to the appellant on 21 April 2016 regarding the increased rental that the Ministry had determined, and allowed until 10 January 2017 before the higher rate of rental took effect. The grace period allowed beyond 60 days had a value of approximately \$6,900.
- [10] Accordingly it followed that the Ministry's assessment of the level of rent was correct, and Housing New Zealand had allowed a fair period of deferral before applying the new rate. The real difficulty for the appellant is the high rate at which his earnings are allocated to rent.

Alternative relief

- [11] Given that the Ministry had been in error in calculating the previous rate of rent, it was necessary to look closely at whether any further relief was available to the appellant. His primary concern was that he had borrowed a significant amount from a bank and entered into that commitment on the basis that he was in a position to repay it, but was significantly disadvantaged when his rent increased. This left him in the position of being quite precarious financially. The Authority's jurisdiction must focus on the point in time when the rent increase was determined,

in terms of its decision regarding further support the appellant could claim. However, the appellant, the Ministry and the Authority did review what assistance might be available to the appellant, not only at the time the rental increase was determined, but also at the point in time when the obligation to make the higher payments took effect. There were a number of forms of assistance potentially available however, it became clear none of the various options could assist the appellant.

Conclusion

[12] The appeal must be dismissed because the Authority has determined that the rent was set at the correct level and has not been able to identify any further relief that was available to the appellant.

[13] The Authority does acknowledge that the effective loss of 50% of much of the appellant's after-tax income provided a significant impediment to him working and maintaining his financial independence in the way he would like.

Dated at Wellington this 16th day of August 2017

G Pearson
Chairperson

K Williams
Member

C Joe JP
Member