

[2017] NZSSAA 059

Reference No. SSA 052/16

**IN THE MATTER**

of the Social Security Act  
1964

**AND**

**IN THE MATTER**

of an appeal by **XXXX** of  
Taradale 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 WELLINGTON on 5 September 2017

### **Appearances**

No appearance by or on behalf of the appellant

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

## **DECISION**

### **Background**

- [1] This appeal concerns the Chief Executive's decision to cancel jobseeker support from 23 December 2015 because the appellant failed to meet work obligations.
- [2] A Benefits Review Committee considered the issue and the appeal before the Authority is against the Benefits Review Committee's decision.
- [3] The notice of appeal was an informal one, and it fails to identify reasons why the decision regarding cancellation of jobseeker support from 23

December 2015 was wrong. Instead, the informal notice focuses on what the appellant regards as inappropriate behaviour on the part of the Benefits Review Committee.

- [4] Regardless of the notice of appeal, the Chief Executive reconsidered the position and in a letter dated 21 November 2016 gave notice to the appellant that his jobseeker support had been reinstated from 23 December 2015 for 13 weeks. It appears that the reinstatement period fully covers the period of time during which the appellant was without jobseeker support.
- [5] The Ministry's position is that there is no live issue left in this appeal. Whereas, the appellant's position is that he contests the amount of reimbursement he was entitled to receive as a result of the changed position. He appears to seek:
- [5.1] a recalculation of the reinstated benefit payment;
- [5.2] costs against the Ministry; and
- [5.3] an order for the payment of an *ex gratia* amount.
- [6] The appellant has indicated that the appeal should be determined on the papers, but has also made references to pursuing a further appeal to the High Court, and made comments such as "this appeal will be a lot of fun".
- [7] This Authority expects the appellant to consider that dealing with the issues he raises is costly, and he has a responsibility to ensure he raises concerns genuinely and clearly. The Authority has a duty to ensure that if an appellant raises any issues within its jurisdiction, it must address the issues fully and in accordance with the law. It will do so.
- [8] As it appeared on the material lodged with the Authority, the decision that is the subject of this appeal has been reversed, and there is no more favourable decision that the Authority can make regarding that matter. However, the appellant says that he has the three issues identified in paragraphs [5.1] to [5.3] above.
- [9] The Ministry has gone to some trouble to provide a calculation of the arrears due after reinstating the jobseeker support payments. The appellant has not provided any information that addresses that calculation or demonstrates it is wrong.

[10] The Authority does have some power to award costs in favour of, or against, appellants. In this case, the appellant has not provided any evidence to support the \$300 in costs that he claims. Furthermore, his notice of appeal failed to address any issue that could have been grounds for changing the original decision. It appears that it is the Ministry that has taken the initiative to enquire further into the merits of the decision. The focus of the notice of appeal was unspecified misconduct on the part of the Benefits Review Committee. That is not a ground for appeal, as this Authority does not supervise Benefits Review Committees; it makes new and independent decisions on the decision under review. Generally, the extent of the concern the Authority has relating to Benefits Review Committees is to ensure that there has been a decision; the decision is usually necessary for the Authority to have jurisdiction. However, that does not extend a supervisory power to this Authority in relation to Benefits Review Committees. The Authority must of course understand the reasons for a Benefit Review Committee's particular decision, and access the material parts of the record in relation to factual matters.

[11] In relation to the claim for an *ex gratia* payment, the appellant has failed to provide justification for such a payment, or provide evidence of circumstances that the Authority could evaluate for that purpose. Regardless, the Authority does not have jurisdiction to award *ex gratia* payments. At most, the Authority could make some observations regarding circumstances relevant to an application to the Government for such a payment.

## **Discussion**

### *The hearing*

[12] The Authority issued a Minute dated 16 August 2017 pointing out to the appellant that dealing with the issues he raised is costly, and he has a responsibility to ensure that he raises issues genuinely and clearly.

[13] The Authority pointed out to the appellant that the decision subject to the appeal had been reversed, and it appeared that there was no more favourable decision that the Authority could make regarding the matter. It is evident from the material filed in the appeal that the Ministry has gone to some trouble to provide a calculation of the arrears due after reinstating the jobseeker support payments, but the appellant had not provided any

information that addressed that calculation or demonstrated how it may be impugned.

- [14] The Authority traversed the jurisdiction to award costs against the Ministry, or against the appellant, and its lack of jurisdiction to order the payment of an *ex gratia* amount. The Authority set the matter down for hearing, and informed the appellant that he was entitled to travel to Wellington at the Ministry's expense for the hearing.
- [15] The appellant did not attend the hearing, and claimed, notwithstanding what the Authority had told him, that the Ministry would seek to recover the costs of him travelling to the hearing. The appellant did not provide a written statement setting out his grounds for pursuing the appeal or the facts that he relies on.

#### *Evaluation of the Appeal*

- [16] The Authority has reviewed the material before it. The appellant's notice of appeal fails to identify any reasonable grounds to support the appeal, the appellant has been requested to provide information to identify grounds for the appeal and he has failed to do that.
- [17] When examining the material before the Authority, it appears that the Ministry has in fact conceded the key element, namely reversing the decision to cancel job seeker support from 23 December 2015. An examination of the recalculation of the reinstated benefit payment discloses no error. We have not established that the appellant has incurred any costs which he could recover against the Ministry. Given the appellant's attitude to the appeal, his failure to provide sensible grounds for the appeal and his failure to attend to support the appeal would potentially justify a modest award of costs against the appellant. There is no jurisdiction to order an *ex gratia* payment in the appellant's favour.
- [18] In these circumstances, we are satisfied that there was no live issue to be adjudicated upon at the time the appellant filed his notice of appeal.

#### **Decision**

- [19] We determine that there was no jurisdiction to file this appeal, as there is no matter of substance still live between the appellant and the Chief Executive; if we are wrong in that, we dismiss the appeal on the basis

that there is no discernible basis on which the Authority could grant any relief in favour of the appellant.

**Dated at Wellington** this 11<sup>th</sup> day of October 2017

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**G Pearson**  
Chairperson

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**K Williams**  
Member

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**C Joe JP**  
Member