

[2017] NZSSAA 066

Reference No. SSA 074 / 16

IN THE MATTER of the Social Security Act 1964

AND

IN THE MATTER of an appeal by **XXXX** of **XXXX**
against a decision of a Benefits
Review Committee

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

S Pezaro - Deputy Chair

K Williams - Member

Dates of hearing: 17 March 2017; 10 May 2017

Appearances

The appellant in person

G. Howell, lay representative for the appellant

J. Hume for the Chief Executive

DECISION

The scope of this appeal

- [1] At the hearing on 17 March 2017 the parties disagreed about the scope of this appeal. We therefore issued an interim decision [NZSSAA 11/17] on 31 March 2017 determining this issue. For the reasons given, we found that the subject of this appeal is the calculation of the debt established by the Ministry against XXXX on 27 November 2014, calculated from 3 October 2008. In the s 12K report the Ministry said it had revised this sum to \$15,399.62.
- [2] We directed that if Ms XXXX disputed the Ministry's record of any payment or deduction or its calculation of the alleged overpayment, she was to file the records on which she based her dispute by 3 May 2017.

- [3] Ms XXXX did not dispute any payment recorded by the Ministry. She said she 'could not say yes or no' to the record. No documents were produced which indicate that these records are not accurate. Therefore we accept the Ministry's calculation of the debt as correct.
- [4] At the second hearing Mr Howell relied on his submissions dated 5 May 2017 (the submissions). He again attempted to extend the scope of the appeal and submitted that the appellant's case fell into the following three categories:
- (a) Assistance provided to her was made recoverable when it should have been non-recoverable.
 - (b) The appellant was not on the correct main benefit and/or supplementary assistance and/or incorrect income tests were applied.
 - (c) Incorrect application of assistance in relation to a childcare grant.
- [5] We determined on 31 March 2017 that the payments relating to childcare assistance are not within the scope of this appeal.
- [6] Paragraphs 16(d) and (e) of the submissions relate to whether debts arising from rent arrears and bond should have been established against Ms XXXX's partner. These decisions were not subject of the application for review to the BRC dated 2 December 2014 and therefore are not within the scope of this appeal.
- [7] Paragraph 16(g) refers to an advance paid for childcare fees. Ms XXXX appears to be claiming that a delay by the Ministry in granting this assistance meant she could not take advantage of the childcare. This is not an issue which was raised in the application to the BRC for review and is therefore outside of the scope of this appeal.
- [8] Mr Howell withdrew 17(a) of the submissions. Paragraph 17(b) relates to what he describes as over-payments of income support and Ms XXXX's entitlement to particular benefits. This issue was not raised in the relevant application for review to the BRC and at the hearing Mr Howell accepted that this was the case. However he argued that although the application for review was lodged in 'the context of the debt', there were 'systemic issues of entitlement'. As Mr Howell well knows, the jurisdiction of this Authority is limited to a decision which has been confirmed or varied by a BRC or made by the chief executive personally. As the matters which Mr Howell raises at

17(b) were not identified in the appellant's application to the BRC for review, we conclude that they are not within the scope of this appeal.

[9] For these reasons, the appeal is confined to those decisions by the Ministry that are identified in paragraphs 16(a)-(c) and (f) of the submissions to the extent that they affect the calculation of the debt established against Ms XXXX:

16. Listed below is the recoverable assistance that it is believed should have been non-recoverable:

a) Shift due to domestic violence – non-recoverable SNG rather than recoverable SNG for appliances, 7 November 2008, **\$599.00**

b) Shift due to domestic violence – non-recoverable SNG/Advance for replacement phone, 3 December 2009, **\$149.00**. Needed for personal safety – domestic violence – non-recoverable SNG.

c) Advance, 19 April 2010, \$251.21. Needed for personal safety – domestic violence – non-recoverable SNG – cost not included in TAS.

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f) Advance, appliances, 5 November 2012, \$29.99 + \$269.90. Shift due to domestic violence – non-recoverable SNG.

[10] The issue that we are required to address is whether these grants should be recoverable, as determined by the Ministry, or non-recoverable, as the appellant submits.

Relevant legislation

Advance payment of benefits

[11] Section 82(6) of the Social Security Act 1964 provides for advance payment of benefits in certain circumstances. Under s 85A(c) of the Act such payments are a debt subject to recovery under s 86(1) of the Act. It is a condition of receiving an advance of benefit that the person agrees to repay the advance, which is generally set at a rate that provides for recovery within two years. In certain circumstances, recovery can be at a lesser amount.

Special Needs Grant and Recoverable Assistance Programme

[12] Section 124(1)(d) of the Act provides for the establishment of welfare programmes approved by the Minister of Social Development; these include the Special Needs Grant Programme (SNG) and the Recoverable Assistance Programme (RAP). The objectives of the RAP are stated in clause 2, these are to:

- a. provide interest-free recoverable financial assistance to non-beneficiaries for essential and immediate needs;
- b. provide interest-free recoverable assistance, complementary to the advance payments of Benefit;
- c. ensure that the financial assistance is provided within the limits and for the reasons prescribed; and
- d. facilitate the recovery of such financial assistance.

[13] Clause 15 of the RAP programme sets out the rules for recovery. Together with Clause 21 of the SNG programme, these provisions make it clear that where financial assistance is paid under the RAP or SNG, which is for the specific circumstances in Part 5 of the SNG and is made recoverable, the payment must be recovered under the respective programmes. The only discretion is as to the rate of recovery.

The case for the appellant

[14] We have considered Ms XXXX's submissions dated 6 March 2017 and 5 May 2017, written by Mr Howell. For the reasons given, we have considered whether the grants identified in paragraphs 16(a)-(c) and (f) of the submissions should be recoverable or non-recoverable.

[15] Mr Howell submits that in these circumstances the Ministry has the discretion to make a SNG non-recoverable. He argues that the relevant grants relate to needs arising from domestic violence. Ms XXXX said that when she attended WINZ to apply for these grants she did so with the support of Women's Refuge because she was a victim of domestic violence.

[16] At the second hearing, Ms XXXX produced a letter dated 10 May 2017 from the Victim Adviser at the XXXX District and High Courts. This letter states

that Ms XXXX was a client of the Victim Support Services on three occasions between 25 November 2008 and May 2012. The letter was written to support Ms XXXX's application for accommodation.

- [17] Ms XXXX also produced six WINZ client file notes extracted from the Section 12K Report, and 33 pages of payment spreadsheets prepared by Mr Howell. As we pointed out to Mr Howell, there was no apparent link between the numbers on these spreadsheets and his submissions, nor was the source of his figures identified. Most of the pages amounted to several columns of numbers without any identification or references, and there were no totals.
- [18] Given the scope of this appeal and the fact that there is no dispute about the payments made or deducted to the appellant, these spreadsheets are not relevant. However, if it had been relevant to consider quantum, we would not accept calculations presented in this form; explanation of the figures is necessary. The Authority is aware that many appellants are either self-represented or assisted by lay advocates, and therefore does not require submissions or briefs to be filed in a particular format. However, it is a minimum requirement that evidence is presented in a logical manner and that is demonstrably relevant to the subject of the appeal.

The case for the Chief Executive

- [19] The Ministry's case is contained in the section 12K Report and its further submissions dated 31 May 2017. In the Section 12K Report the Ministry limited its submissions to the correctness of the balance of debt as at 21 November 2014.
- [20] The Ministry refers to exhibits produced in its report which demonstrate that when an advance was provided to Ms XXXX she was made aware of the recovery amount. However the Ministry says this recovery rate was amended and reduced several times due to Ms XXXX's circumstances. Because the recovery rate was reduced, it took longer than two years to recover the amount advanced.
- [21] In response to Mr Howell's reliance on Clause 15.2 of the SNG programme, the Ministry submits that the assistance available to relocate when a sole parent is a victim of family violence is assistance provided after initial separation, in accordance with 15.2.1(b). That assistance is limited to assistance for accommodation, bond or rent in advance, and is limited to

\$800. Assistance for beds, bedding, essential appliances, and the cost of connecting services is non-recoverable and limited to \$600. The information from the Women's Refuge confirms that Ms XXXX was assisted by a social service agency four times between September 2008 and April 2014: on 1 and 2 October 2008, 6 November 2009 and 31 May 2010.

- [22] The Ministry accepts that Ms XXXX qualified for assistance when she initially separated around 2/3 October 2008. She was granted a recoverable special needs grant of \$800 for accommodation on 7 November 2008 and at this time no other costs were identified as being related to separation.
- [23] The Ministry contends that although Ms XXXX moved many times between 2008 and 2014, their records do not indicate that these moves were due to an initial separation, other than in October 2008 and January 2012.
- [24] The Ministry's schedule of non-recoverable assistance paid to Ms XXXX between 3 October 2008 and 19 November 2014 indicates that most of these grants were for food. There were also two grants totalling \$600 for dental treatment, a payment for a phone to look for work, three payments for shoes and three for clothing. Some of these grants were paid as transition to work grants.
- [25] In response to Mr Howell's submission that any debt should be written off under s 86(9A) and (9B) of the Act, the Ministry relies on the Ministerial Direction on Debt Recovery which came into force on 7 July 2014 which identifies relevant factors for determining the rate and method of recovery of debt referred to in s 85A of the Act:

4 Rate and method of recovery

- (1) In determining the rate of recovery, or the method of recovery, or both, in respect of a debt under section 86(1BA)(a) of the Act, the chief executive must give consideration to the following matters:
- (a) the amount of the debt:
 - (b) the ability of the debtor to meet his or her needs and the needs of his or her dependants:
 - (c) the circumstances of the debtor and his or her dependants:
 - (d) whether the rate or method of recovery would cause undue hardship to the debtor or any of his or her dependants:
 - (e) the effect that the rate and method of recovery will have on the ability of the debtor to-

- (i) support himself or herself;
 - (ii) fulfil any other obligations that he or she has under the Act:
- (f) the cost of recovery.

[26] The Ministry submits that these directions impose a duty on the Ministry to take all reasonable practicable steps to recover a debt and there is only discretion as to the rate and method of debt recovery, and whether recovery should be temporarily deferred. The relevant test is undue hardship which must be excessive or disproportionate to the circumstances. The Ministry states that it will take into account any information that Ms XXXX provides to demonstrate the nominal amount that she can afford to pay and the reason for her budget being limited.

Evaluation of the evidence

[27] After the second hearing, Ms XXXX was given a further opportunity to file by 24 May 2017 documents which she said would identify the dates on which she attended WINZ offices with a support person to seek additional support due to domestic violence. The documents Ms XXXX provided are a letter from XXXX (the Maori Women's Refuge) stating that they supported her in 2010, and a schedule of attendances, telephone calls and appointments with this agency.

[28] We directed the Ministry to provide a schedule showing all known recoverable grants paid to Ms XXXX. Any response by Ms XXXX to this schedule was to be filed and served by 31 May 2017.

[29] We have considered all the evidence produced by the parties which relates to the four grants listed at paragraphs 16(a), (b), (c) and (f) of the submissions, identified by the date of the grant, as follows:

7 November 2008

[30] Mr Howell's submissions state that there was a recoverable SNG grant of \$599 on this date for appliances. However the WINZ file note that he produced on 9 May 2017 in support records that the grant on this date was a recoverable grant of \$800 for re-establishment after an incident of domestic violence. The file note is consistent with the reply submissions of the Ministry.

- [31] At the hearing, Ms Hume said that this grant was to purchase a fridge. She said the application was made some six to seven weeks after the incident of domestic violence. She said that her fridge was old and not working and that she needed to replace it after the separation. No evidence was provided of the condition of the fridge.
- [32] Mr Howell submitted that the need to replace the fridge arose from domestic violence and the resulting separation. He argued that the application for non-recoverable assistance does not need to be made immediately after an incident to fall within clause 15.2 of the Special Needs Grants programme.

3 December 2009

- [33] On 3 December 2009 Ms XXXX was granted \$149 to replace a lost mobile phone. Ms XXXX says she needed a phone for her personal safety because she was at risk of domestic violence.
- [34] The client notes confirm that Ms XXXX lost her phone; was six months pregnant, required the phone for medical reasons, had a protection order and required the phone should she need to contact the Police. The file note also records that she agreed to repay this grant at \$2 per week and that, at that time, Ms XXXX was \$990.36 over her advance entitlement.

19 April 2010

- [35] Ms XXXX received a grant of \$251.21, which Mr Howell said she needed for personal safety due to domestic violence. The file note records that this grant was made under s 82(6) of the Act for telephone arrears. The note also records that 'client made well aware that NO more advances will be approved as she is now over \$1,000 in advance entitlement'.
- [36] Ms XXXX has not identified any incidents of domestic violence or recent separation that occurred immediately prior to this grant application. The letter from Victim Support states that she used this service three times between 25 November 2008 and May 2012. However, no dates are provided to link the timing of any incident with this grant.

- [37] The schedule provided by XXXX (the Maori Women's Refuge) records two telephone calls relating to Ms XXXX on 7 and 8 April 2010 but she has not provided any information about the content of these calls.

5 November 2012

- [38] Mr Howell says that two grants were made to Ms XXXX on this date—\$29.99 and \$269.90 for items which were necessary as a result of her need to move due to domestic violence.
- [39] Ms XXXX did not challenge the accuracy of the Ministry file notes, in the s 12 K report, which records that she was granted \$120 for food in addition to the two grants of \$29.99 and \$269.90 to cover the cost of a table, step ladder, a fan, a kettle and clothes. On this date she owed the Ministry \$10,983.14.
- [40] The Ministry file notes of 17 - 23 October 2012 record that Ms XXXX applied for assistance with food and a tenancy bond. She needed to move to a more affordable place after losing care of one of her children, which reduced her benefit. The Ministry paid her bond and gave her a \$120 food grant, and paid an overdue power bill of \$246.98.

Discussion

- [41] There is no evidence that any of the four grants that fall within the scope of this appeal were necessary due to either recent domestic violence or a recent separation. Accordingly Ms XXXX was not entitled to a SNG under clause 15.2 of the SNG programme on any of the dates in question.
- [42] We do not accept Mr Howell's submission that Ms XXXX believed that the assistance that she was provided with was non-recoverable at the time that it was granted, and that the Ministry subsequently made it recoverable. Every record produced by the Ministry, and those relied on by Ms XXXX, confirm that the amount granted to her was recoverable and that she agreed to pay off each grant at a specified rate.
- [43] We are therefore satisfied that the amounts provided as assistance referred to in 16(a), (b), (c), (d), (e) and (f) were all provided as recoverable grants with Ms XXXX's consent.

Conclusion

[44] The four relevant grants to the appellant are recoverable. For the reasons given, the amount calculated by the Ministry as owing by Ms XXXX is correct.

[45] As at 21 November 2014 the balance of unrecovered overpayments owed by Ms XXXX to the Ministry was \$15,399.62.

Orders

[46] The appeal is dismissed.

[47] The Ministry is entitled to recover the sum of \$15,399.62 from the appellant.

Dated at Wellington this 22nd day of November 2017

S Pezaro
Deputy chair

K Williams
Member