

[2018] NZSSAA 005

Reference No. SSA 063/16

**IN THE MATTER** of the Social Security Act 1964

**AND**

**IN THE MATTER** of an appeal by **XXXX** and **XXXX** of Temuka 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** on the papers

### **Representation**

The Appellants by their agent Ms K Brereton

The Chief Executive by his agent Ms S Singh

## **DECISION**

### **The scope of the appeal**

[1] This appeal is brought against a decision of a Benefits Review Committee. There has been considerable confusion as to what the subject of the appeal is. Mr Signal for the Chief Executive put the matter this way:

There were two separate but linked decisions. One to suspend the benefit awaiting income details and one to eventually establish an overpayment.

The first decision was made on 7 July 2015 and the second on 27 August 2015.

However both decisions were heard by the [Benefits Review Committee] in March [2016] I can't find that the second report on the overpayment has been released yet.

[2] For the appellants, Ms Brereton replied saying:

The decision attached [reviewing a decision made on 07 July 2015] is the one I am appealing.

[3] Ms Brereton went on to say the issues affected both the appellants, and only one of the two matters had been heard. That was the decision to stop the benefit, and the second issue of the review of the debt had not been heard.

[4] Accordingly, there have been two distinct positions put to us:

[4.1] For the Chief Executive Mr Signal says both issues were heard by the Benefits Review Committee, but it only addressed one of them; and

[4.2] Ms Brereton for the appellants says that the Benefits Review Committee has only heard one of the issues.

[5] An examination of the Benefits Review Committee decision indicates that its scope is:

[5.1] It was a decision on an application for review by the female appellant only;

[5.2] The subject-matter is a decision made on 7 July 2015 to "stop the benefit while waiting for income details";

[5.3] The decision was to stop job seeker payments to both appellants.

[6] Nothing in the Benefits Review Committee's decision supports the view that the Benefits Review Committee addressed the review of the debt, its report indicates the Committee only considered the 7 July 2015 decision to stop the benefit while waiting for income details. Ms Brereton, has indicated that is the scope of the appeal, we will only address that issue.

[7] In relation to whether the appeal is by both appellants, or only the female appellant, we accept it applies to both appellants. The Benefits Review

Committee accepted the decision concerned both of them. It is necessary to be mindful that where spouses are equally affected by decisions when one of them initiates an action, it can be on behalf of both spouses; unless, there is contrary information. Accordingly, we take the view the original request for review, the Benefits Review Committee; and now this appeal, were pursued by both appellants.

### **The Benefits Review Committee's decision**

[8] The Benefits Review Committee identified the key facts as:

[8.1] The Ministry received information from Inland Revenue indicating the appellants had been working while receiving a benefit, and at least for some period their income was "in excess of the allowable level for a benefit to be paid".

[8.2] On 7 July 2015, the Ministry stopped the benefit, as "it was unclear as to whether [the female appellant] was still working, [the] benefit payment was suspended from the first available date".

[8.3] The Ministry failed to issue a notification letter regarding the suspension of the benefits.

[8.4] On 30 July 2015, the Ministry received income information from the appellants' agent, and as a result the benefits were resumed but there was a reduction in the rate.

[9] In terms of the legal issues, the Benefits Review Committee referred to section 81 of the Social Security Act 1964. It allows the Chief Executive to review any benefit, to ascertain entitlement, the rate of benefit, and may require the affected persons to provide information for that purpose.

[10] The issue raised by the appellants with the Benefits Review Committee was that they were not told the Chief Executive would suspend their benefits, and took action that affected their ability to seek work.

[11] The Ministry's response was that it was the appellants' responsibility to provide information about income that they received affecting their entitlement to benefits. They failed to provide the necessary information, and at the time the benefits were suspended the Ministry lacked the necessary

information to determine their level of entitlement. The Ministry accepted it ought to have given notice of the action, but failed to do so due to an administrative error. However, the Ministry said that did not affect the validity of the action.

[12] The Benefits Review Committee acknowledged there had been some difficulties faced by the appellants. The on-line notification process had confused them, the male appellant has been trespassed from the local Ministry office, and the compliance obligations had proved difficult. The Benefits Review Committee also identified the appellants may be entitled to additional support due to changed circumstances.

[13] The Benefits Review Committee upheld the original decision to stop the benefit.

#### **The Chief Executive's position in this appeal**

[14] The Chief Executive's position is that:

[14.1] On 18 June 2015, the Ministry had notified the appellants it may take action;

[14.2] They failed to provide information in response;

[14.3] On 7 July 2015, their benefits were properly suspended until the information was available;

[14.4] The Ministry was in error in not issuing notification of the suspension, but that did not alter the correctness of the suspension;

[14.5] The correct figures did involve a reduction in the appellants' benefit entitlement.

#### **The appellants' position**

[15] The appellants take the position that:

[15.1] The Ministry failed to clearly communicate, and they misunderstood the way in which their respective incomes affected each other's entitlement to a benefit.

[15.2] The appellants did attempt to provide information to the Ministry following the notification of 18 June 2015. The male appellant took payslips to the Ministry's office, and they were accepted. The female appellant attended the office, but did not have payslips, so her declaration was not accepted.

[15.3] The male appellant complied, and reasonably did not expect his payments to be greatly affected.

[15.4] The female appellant's oral declaration without payslips was ignored by the Ministry.

[15.5] The Ministry's processes for declaring income are deficient.

[16] In summary, the appellants provided the information requested. However, the Ministry rejected it, because the female appellant did not provide payslips in support.

#### **The Ministry's response to the appellants' position in this appeal**

[17] The Ministry's response is essentially directed to something other than the appellants' case. The appellants say they did provide information that made it unreasonable for the Ministry to suspend the payments. The Ministry's response is to say the appellants had a responsibility to provide information. However, that response did not consider what the appellants say. They say they did provide the information, aside from bringing in payslips for the female appellant. The Ministry did not address what they should have done with the possibly incomplete information they did receive.

#### **Discussion**

[18] Hearing this appeal on the papers has been less than an ideal approach. There is very little law affecting the decision. Section 81 of the Act contains the obvious and necessary power and duty for the Chief Executive to review benefits, and make such changes as may be necessary. Where information is required and he asks for it, action may be taken to suspend or terminate a benefit:

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.

[19] That provision is contained in section 81(1) of the Act. Section 121(2) of the Act provides:

In hearing and determining any appeal, the Appeal Authority shall have all the powers, duties, functions, and discretions that the chief executive had in respect of the same matter.

[20] Accordingly, we are required to determine the very practical issue of whether on 7 July 2017 the appellants' benefits should have been suspended.

[21] To make that decision the first step is to determine the facts. As we noted, that is problematic given this is a hearing on the papers and the facts have not been agreed. However, the appellants have asserted that the male appellant presented payslips, and the female appellant provided oral information to the Ministry that showed they were entitled to a benefit, though abated to some extent. The correctness of the abatement in the rate of benefit rather than loss of all entitlement is borne out by the subsequent reinstatement of the benefit after it was stopped.

[22] The Chief Executive has not sought to challenge the appellants' claim they provided the evidence of their income in response to the 18 June 2015 letter from the Ministry. The Chief Executive neither presented conflicting evidence, nor sought to cross-examine the appellants. Their claim that they presented this information is plausible, and accordingly we have no reason to reject it.

[23] It follows the facts are that the appellants presented evidence to the Ministry that they were entitled to benefits, and the only objection was to the form of verification. That is because the female appellant had not supported her oral statement with payslips.

[24] Standing, as we must, in the position of the Chief Executive's delegate on 7 July 2017 our response would have been:

[24.1] To explain to the appellants that the information they provided indicated they were entitled to a benefit, but not at the full rate;

[24.2] It is essential to get the figures correct, because if that is not the case then over or underpayments will result;

[24.3] Accordingly, the female appellant needed to get clear written records in a short space of time, return with that information and then the correct rate for the benefit would be established;

[24.4] If the appellants failed to take that opportunity, then suspension or abatement in the rate of benefit would apply until they did provide the necessary information.

[25] We do not consider it was a proper response to cancel or suspend the payment of the benefit entirely, given the substantial compliance on the part of the appellants. The Ministry had enough information to know the benefit should not be stopped, and could have required further proof and given notice of the consequences of non-compliance. That in our view was the proper response on 7 July 2015.

[26] Accordingly, in our view the decision to stop benefits payments made on 7 July 2015 was not correct.

### **Conclusion**

[27] We are satisfied that the appeal must be allowed. The Authority reserves leave for any party to apply to have the Authority make a determination as to any orders required and, if necessary, the Authority will make orders in that regard. However, it appears that the issue of under and overpayments concerns separate decisions that are not currently live issues in this appeal.

**Dated at Wellington** this 19<sup>th</sup> day of January 2018

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**G Pearson**  
Chairperson

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**K Williams**  
Member

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**C Joe JP**  
Member