

[2019] NZSSAA 24

Reference No.SSAA
136/16

IN THE MATTER

of the Social Security Act
1964

AND

IN THE MATTER

of an appeal by **XXXX** of
Rotorua 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

Heard on the papers

Appearances

The Appellant: Ms H S Te Nahu, lawyer, Rotorua District Community law
Centre, Rotorua

The Chief Executive of the Ministry of Social Development: Ms Aniko
Katona, agent

FINAL DECISION

The Issues

[1] The Authority issued an interim decision on 20 April 2018 (“the Interim Decision”),¹ this decision and the Interim Decision should be read together). The Interim Decision indicated the Ministry (MSD) should make inquiries, they should have readily identified the true position relating to the appellant’s benefit entitlements. We requested that MSD provide the information, as it was necessary to make a decision on a correct factual basis.

¹ SSAA Appeal [2018] NZSSAA 018.

- [2] MSD reported that it had been agreed no further inquiries would be made. We understood that indicated there had been an agreed resolution between the parties. Recently, MSD said it was expecting a final decision.
- [3] Accordingly, we are in a position where we must decide the appeal on the information we have, with the knowledge that MSD will not make the inquiries necessary to determine the true position.
- [4] In the Interim Decision, in summary, we found:
 - [4.1] The issues arising in the appeal had not been properly investigated, we have been asked to reach conclusions without the basic and relevant information necessary to determine the appeal. We said we would make a decision on the information we had but did expect to get the information to make a correct and reliable decision. The necessary information should have been readily available.
 - [4.2] MSD alleged fraud on the part of the appellant and it had gone through the process of:
 - [4.2.1] conducting a fraud investigation;
 - [4.2.2] presenting a case to the Benefits Review Committee;
and
 - [4.2.3] arguing this appeal.
 - [4.3] MSD took those actions without gathering the basic, necessary and relevant information. It instead took positions that relied on inconsistent records from IRD, the appellant's bank accounts and her brother's bank accounts. MSD failed to look into who made payments to the appellant and on what basis. If proper records were not available, that is a matter of serious public concern. We expected MSD to ascertain the true position, given the unsatisfactory conduct of the appeal.

- [4.4] We indicated, that on the information we had, we would conclude:

Quantum of income

- [4.4.1] The extent of the net income the appellant received between 31 March 2015 and 23 November 2015 when her Supported Living payments (SLP) were cancelled was probably \$8,090, net of tax.

Overpayment not recoverable

- [4.4.2] Any overpayment of SLP was the result of error on the part of officers of MSD, and that the appellant did not contribute to the errors.

- [4.4.3] The appellant accurately reported her circumstances to MSD. MSD officers alleged fraud without an adequate foundation and failed to ascertain what income the appellant in fact received. The appellant received the payments in good faith, on the balance of probabilities; she had not received more than the \$5,200 gross payments before reporting to MSD in June 2015, as officials told her she could. She then faced allegations of fraud which she found perplexing, as we did. The allegations on the evidence before us were wholly unjustified.

- [4.4.4] The payments that placed the appellant over the threshold all occurred after MSD was notified of the appellant's difficulties. The appellant required assistance to understand the nature of the payments she received, the effect of the periodic payments on SLP, and assistance to ensure MSD could administer her entitlement. Funded Family Care (FFC) and SLP involve a complex interface, and the persons engaged in it will typically be poorly equipped to address such complexities without assistance.

- [4.4.5] This was a case where the proper response was for MSD officers to liaise with the appellant and Ministry

of Health (MOH) contractors and ensure that adequate structures were in place to ensure the appellant knew what income she received, and her reporting obligations.

[4.4.6] The evidence pointed to openness on the part of the appellant and genuine confusion as to what she received as income. We note that MSD officials had, to that point, failed to provide a reasonable foundation to quantify employment income the appellant received. Accordingly, we concluded that the appellant's confusion was, on the balance of probabilities, both genuine and reasonable in her circumstances. It was caused by MSD officers who had unjustifiably failed to understand the complexities of the appellant's circumstances.

[4.4.7] The evidence also established that the appellant had changed her position, believing the payments were sums of money she was entitled to receive. The appellant complied with her obligations to notify MSD as she understood them, and consistently with the information MSD provided. The appellant did not have an understanding as to the nature of moneys she received; the only payments labelled "salary" were the first three instalments, and they amounted to less than the threshold MSD officials identified. The appellant actively sought assistance from MSD and reasonably placed her faith in MOH and MSD to put in place appropriate compliance measures.

[4.4.8] Any overpayments were not recoverable due to failings on the part of Ministry officials.

Costs

- [5] The costs of the appeal may potentially be awarded in the appellant's favour on a solicitor/client basis *MSD v Genet*.² Counsel may submit a memorandum within 20 working days, MSD may reply within a further 10 working days. If necessary, the Authority will convene a telephone conference to deal with the issue.

Decision

- [6] The appeal is allowed for the reasons set out in the Interim Decision, the appellant received income in the amount identified in that decision, which affected her entitlement to a benefit, for the further reasons identified in the Interim Decision any overpayment of benefit entitlements is not recoverable.

Dated at Wellington this 10th day of April 2019

G Pearson
Chairperson

K Williams
Member

C Joe JP
Member

² *Chief Executive of the Ministry of Social Development v Genet*
[2016] NZHC 2541.