

[2020] NZSSAA 8

Reference No. SSA 57/19

IN THE MATTER of the Social Security Act 2018

AND

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

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

S Pezaro - Deputy Chair

K Williams - Member

C Joe - Member

Hearings at AUCKLAND on 8 October 2019, 29 November 2019

Appearances

8 October 2019

The appellant in person with Mr Bioletti as McKenzie friend and a support person
P Siueva, agent for the Ministry of Social Development

29 November 2019

The appellant in person and Mr Bioletti
Ms Prasad, counsel for the Ministry of Social Development
P Siueva, agent for the Ministry of Social Development

DECISION ON JURISDICTION

The appeal

[1] XXXX filed this appeal on 1 July 2019. The content of her Notice of Appeal raised the question of whether the appeal falls within the jurisdiction of the Authority, or the issues have already been determined due to convictions in the District Court relating to the same matters.

[2] We have determined at least as far as the concerns XXXX has raised there is nothing we can or should determine.

[3] In her Notice of Appeal, XXXX stated that the appeal was against a decision of the Benefits Review Committee dated 2 May 2019 and a decision of the Chief Executive of the Ministry of Social Development on the same date. She attached the report of the BRC and set out the grounds as follows:

The Benefits Review Committee held a Review of Decision meeting 02/05/2019 with myself.

I am in opposition, oppose the Decision made 02 May 2019 by the Board.

As it stands it is of majority that it is UPHELD and satisfied of the criminal proceedings was beyond reasonable doubt and as such original decision should be UPHELD.

I will still stand by my decision of oppose this decision and complaint of the agents Agencies, Departments.

I now subject without Prejudice to the

Ministry of Justice

Tribunals Unit

Social Security Appeal Authority

Att: The Secretary

Oppose:

- The process/processes of the MSD & Investigation Unit
- Human Rights Declined, under NZ Bill of Rights Act 1990 – section 3.
- Breach of Privacy Rights under 1993, Part 8, complaints section 66, 67, 68.
- Ombudsman Office, failed to follow up my complaint of whanau wai number 2861.
- Social Security Appeal Authority failed to respond and follow up my complaint.
- Breach of Te Tiriti o Waitangi. Wai claimant of whanau wai number 2861.

- Prejudicially affected by various Acts & Crown policies, practices, acts, omissions adopted by or on behalf of the Crown and its agents.
- In Breach of the Treaty Principles, Kawanatanga obligations.
- Proven, evident – direct result of Crown Agencies Processes and the imposition of their policies & practices.

[4] XXXX stated that the outcome she sought was for the Social Security Appeal Authority to “investigate, review, rehearing of the full matter of concerns, complaint, breach, upholding of law”.

Relevant law

[5] Section 395 of the Social Security Act 2018 (the 2018 Act) provides a right of appeal to the Authority only against decisions made under ss 397, 398 and 399 that have been confirmed or varied by a Benefits Review Committee or made by the Chief Executive personally.

[6] The legal principles relating to *res judicata* and issue estoppel prevent parties before this Authority challenging determinations already made in a criminal proceeding concerning the same subject.

The issue for the Authority

[7] We must decide whether there are any live issues before us in this appeal. The directions issued reflect that, although XXXX clearly stated in her Notice of Appeal that she was appealing the decision considered by the BRC on 2 May 2019, she also raised other, broader issues.

[8] We have given XXXX the opportunity to present the issues of substance that concern her.

Background

The District Court proceedings

[9] The Ministry brought prosecutions against XXXX which form the background to these proceedings. On 28 April 2015, the Ministry told XXXX that it had information that she was in a de facto relationship which may affect her benefit. The Ministry referred to her request on 17 April 2015 for full disclosure of her file including investigation material. The Ministry advised XXXX that her request was declined and she had a right of review of this decision by the Privacy

Commissioner. The writer asked to meet with her and told her she could bring a support person.

- [10] On 26 June 2015, the Ministry wrote to XXXX confirming that its investigation established that she failed to advise the Ministry of her relationship and income received from other sources. The letter stated that the total overpayment was \$122,748.96 and set out a schedule showing how this sum was calculated. XXXX was advised that she had a right of review by a BRC and she needed to exercise this right within three months of the decision. The letter also stated that she may be prosecuted.
- [11] On 30 July 2015, the Ministry wrote to XXXX stating that it had decided to prosecute her under the Crimes Act 1961 with obtaining by deception for failing to disclose that she was living in a de facto relationship and omitting to disclose that she received income from other sources, and for dishonestly using a document to obtain a pecuniary advantage, being benefits.
- [12] On 5 August 2015, the Ministry wrote to Mr Presland, XXXX's lawyer, responding to a letter from XXXX on 17 April 2015.
- [13] On 25 May 2016, XXXX was sentenced in the Papakura District Court after pleading guilty to seven charges under the Crimes Act 1961. In the sentencing notes, Judge Hikaka recorded that XXXX provided 15 forms with false information and received \$87,741.52 of benefits to which she was not entitled in the period 20 February 2009 to 10 May 2015. She was sentenced to 10 months home detention and payment of \$13,000 reparation in accordance with authority that reparation should be limited to an amount achievable by the defendant within a five-year period.
- [14] On 1 June 2016, an investigator from the Ministry's Fraud Investigation Services wrote to XXXX stating that the reparation of \$13,000 was only part of the \$122,748.96 overpayment of benefit and the Ministry would contact her to discuss repayment of the balance.

XXXX's application for review

- [15] On 17 August 2018, XXXX applied for a review of the Ministry's decision on 26 June 2016 to establish a debt. She named Ben Hoffman of Auckland Action Against Poverty as her advocate.

- [16] After it received this application, the Ministry conducted an internal review and disestablished \$40,194.66 of the debt. The Ministry notified XXXX of its decision that the balance owed was \$97,845.90. The Ministry then referred the matter to a BRC, submitting that the BRC had no jurisdiction because the question of the debt owed was *res judicata*, having been decided by the District Court.
- [17] The BRC proceeded to consider the application for review and issued its determination on 2 May 2019. It agreed with the Ministry that the principle of *res judicata* applied. Neither the Ministry nor the BRC appears to have addressed the question of whether the decision was otherwise amenable to review.
- [18] On 1 July 2019, XXXX filed this appeal stating that it was against the BRC decision of 2 May 2019.
- [19] Subsequently, at the first hearing and in her statement filed before the second hearing, XXXX said that on 17 April 2015 she asked for a review of decision but the right of review was declined.
- [20] She also said she wrote to the Ministry on 4 August 2015 seeking a review of the Ministry's decision to prosecute her and alleging that the Ministry breached the Privacy Act 1993. In this letter she gave Mr Presland's details as her address for service. XXXX said that she completed the letter in Mr Presland's presence. The Ministry says it did not receive this letter.

The proceedings before the Authority

- [21] On 4 September 2019, the Deputy Chair of the Authority convened a telephone conference attended by XXXX and Ms Siveva, agent for the Ministry. XXXX said her appeal was about the conduct of the Ministry and the finding of the District Court that she owed the Ministry the sum of \$97,845.90.
- [22] The Deputy Chair directed that the question of jurisdiction would be determined as a preliminary matter at a hearing on 8 October 2019 and a timetable was set for the parties to file submissions prior to this hearing. The directions stated that under s 395 of the 2018 Act the Authority has the power to determine appeals against decisions either confirmed or varied by a Benefits Review Committee or made by the Chief Executive personally and that s 397 of the

2018 Act sets out the decisions or determinations made by the Ministry which give rise to appeal rights.

The hearing on 8 October 2019 (the first hearing)

- [23] The Ministry filed its submissions in accordance with the timetable; the appellant did not file any documents before the hearing.
- [24] At the hearing XXXX produced a bundle of documents including her submission for a review of decision to the Benefits Review Committee. She appeared with Mr Bioletti. He is a lawyer and, as XXXX is entitled to be legally represented, there was no bar to him appearing as counsel. However, Mr Bioletti said that he did not want to go on the record as counsel and was appearing as a McKenzie friend.
- [25] After some discussion with Mr Bioletti as to the role he intended to take, we allowed him to appear as a McKenzie friend on the authority of *Craig and Slater*¹ where the High Court allowed a practising barrister to appear as Mr Craig's McKenzie friend. The High Court permitted the barrister to sit beside Mr Craig, take notes, quietly make suggestions to Mr Craig and give advice and propose questions and submissions to Mr Craig who could put them before the Court. The barrister could only address the Court with leave and was not permitted to question a witness. Mr Bioletti accepted that he would attend as McKenzie friend on these conditions.
- [26] We asked XXXX to identify the decision that the BRC had reviewed which she considered to be the subject of her appeal. As recorded in the directions issued after this hearing, XXXX told us that the decision she wished to appeal was the decision made in 2015 to prosecute her. She said that she wanted a review of the Ministry's process.
- [27] The hearing was adjourned for XXXX to file submissions on jurisdiction and the Ministry to reply. We directed XXXX to confirm in writing the decision of the Ministry that she considered to be the subject of her appeal, the date on which that decision was made by the Ministry, the reasons she considered that the decision was not correct, and the outcome she sought. She was directed to file her submissions and all documents and evidence that she intended to rely on for her argument on jurisdiction.

¹ *Craig and Slater* [2017] NZHC 874.

The hearing on 29 November 2019

[28] In response to the directions issued after the first hearing, XXXX filed what she referred to as her 'submission of evidence' on 17 October 2019. The Ministry filed further submissions in reply on 22 November 2019.

[29] XXXX stated that:

- a. Her main concern was the process and processes of the Ministry and the administrative order they used to have her prosecuted with benefit fraud.
- b. On 17 April 2015 she requested a review of decision and was declined that right of review.
- c. She was forced to attend a voluntary interview with the Ministry investigator which was used as a formal meeting and evidence was used in the Court process without her knowledge.
- d. As a result and with the decline of her review of decision application, she was prosecuted and served 10 months home detention, paid \$13,000 reparation and has a criminal conviction of benefit fraud.
- e. The Ministry has disestablished \$40,164.66 from the benefit debt and she would not have met the threshold of 10 months home detention if this amount had been disestablished prior to the prosecution process.

[30] XXXX attached to her submissions a Review of Decision application dated 31 July 2015 nominating Mr Presland as her lawyer authorised to act on her behalf and a personal details form dated 17 April 2015. In the ROD application she stated that she was seeking to review the decision that she owed WINZ \$122,881.94. On the Personal Details form she stated that she was informing WINZ that she would be requesting information under the Privacy Act 1993 and the Official Information Act.

[31] She enclosed correspondence with the ombudsman, the Ministry of Social Development, letters from WINZ, her submissions to the BRC for the hearing on 2 May 2019, a copy of the BRC decision, another copy of her Notice of Appeal, and a memorandum filed by the Deputy Chairperson of the Waitangi Tribunal on a claim by Stephen James Henare on behalf of himself and the Henare

whānau noting that the claim concerns the failure of the Crown to provide for the health care of Māori in respect of depression and mental illness and a copy of the statement of claim in the Waitangi Tribunal.

The case for the appellant

[32] XXXX failed to focus her submissions on the question of jurisdiction, despite clear directions to do so and assistance from Mr Bioletti. Her position on the subject of her appeal has changed since she filed it. In her Notice of Appeal, she appealed the decision to establish a debt; in submissions filed before the second hearing, XXXX said that “my concern has always been about the Process and Processes of the Ministry of Social Development. The Administrative Order that they have used to have me prosecuted with Benefit Fraud”.

[33] Her final position seems to be that she appeals the process used by the Ministry to prosecute her. She said that the main issue was that she was declined a right of review before she was prosecuted. She said that on 17 April 2015 she requested in writing a review of decision and completed the application for review with Mr Presland. XXXX was adamant that, although there is no record of this application having been received, it was sent to the Ministry.

[34] XXXX does not appear to dispute that there was a debt owing to the Ministry and is making repayments; her concern about the amount owed is that, had it been reduced prior to sentencing, she would not have served 10 months home detention.

The case for the Ministry

[35] The Ministry submitted that the Authority has no jurisdiction to determine any of the issues raised by XXXX in her Notice of Appeal or during the proceedings because:

- a) The BRC hearing on 2 May 2019 followed the Application for Review of Decision filed on 17 August 2018. The decision under review was the decision to establish a debt. As this decision was not confirmed or varied by a Benefits Review Committee, because the BRC declined jurisdiction, there is no right of appeal under the 2018 Act.

- b) XXXX's complaints about procedures followed by the Ministry and other government agencies and alleged breaches of privacy and the Tiriti o Waitangi are not matters within the Authority's jurisdiction;
- c) The document which XXXX says was an application for review dated 17 April 2015 was a personal details form used to request records from the Ministry. No right of appeal arises from this document.
- d) The application for review which the Ministry received on 7 August 2015 was in response to the Ministry's letter of 30 July 2015 stating that it had decided to prosecute XXXX. There is no right of review or appeal against a decision to prosecute under the 2018 Act.

Discussion

Our role

[34] In considering whether the Authority has jurisdiction to hear this appeal, we are conscious that the Authority has a duty to reach the legally correct decision even if the appellant is not able to correctly identify the assistance to which they are entitled or the statutory basis for that entitlement. The Supreme Court² considered that s 12M of the Social Security Act 1964³ imposed a duty on the Authority to consider all relevant matters and that:

The duty of the Authority was to reach the legally correct conclusion on the question before it, applying the law to the facts as it found them upon the rehearing without concerning itself about the conclusion reached by the BRC ...

[36] However, this enquiry must take place within the parameters of the Authority's jurisdiction which is limited to appeals against decisions that have been confirmed or varied by a BRC. The BRC determination issued on 2 May 2019 was the result of XXXX's application for a review of the Ministry's decision to establish that she owes a debt to the Ministry.

² *Arbuthnot v Chief Executive of the Department of Work and Income* [2007] NZSC 55.

³ Now s 401 in the Social Security Act 2018.

What decisions or issues can the Authority determine in this appeal

[37] We first turn to identify the decisions or issues we can potentially consider. As noted, the unfocused nature of XXXX's approach means we can best review the potential matters before focusing on the grounds XXXX has advanced.

[38] It appears XXXX is concerned about the integrity of the prosecution process. It seems within that potentially the following arise (we refer to XXXX's submissions before us, and the Benefits Review Committee):

- a. The Ministry's decision to prosecute;
- b. The conduct of the prosecution and a consequent miscarriage of justice;
- c. Defective representation, involving coercion into pleading guilty, conflict of interest, failure to act on instructions,
- d. Application of the reparations order.

[39] The other aspect raised by XXXX is her liability for an overpayment of benefit entitlements the Ministry says she owes. It appears that:

- a. The Ministry established a debt, and on 26 June 2015 it notified XXXX she was overpaid a total of \$138,010.56 (\$122,748.96 for XXXX alone plus \$15,261.60 shared relationship debt). The debt arose in the period from 22 September 2003 to 10 May 2015.
- b. On 25 May 2016 the District Court, after entering a conviction⁴ on a guilty plea, sentenced XXXX on the basis she was overpaid a benefit from 20 February 2009 to 10 May 2015 amounting to \$87,741.52, resulting from the provision of false information (which founded the charges). However, the reparation order was based on a higher figure \$88,091.50 of which \$1,650 had been paid. The sentence included reparation payments of \$13,000 (at \$2,600 per annum).

⁴ Obtaining a pecuniary advantage by deception (ss 240 and 241 of the Crimes Act 1961), by failing to disclose a *de facto* relationship, and failing to disclose income (1 charge for each). Using a document dishonestly, and using a document with intent to obtain a pecuniary advantage (s 228(b) of the Crimes Act 1961).

- c. On 26 June 2015, the Ministry notified XXXX of a debt of \$138,010.56, covering periods before and during the period to which the convictions related.
- d. On 3 September 2018, the Ministry wrote to XXXX saying it “disestablished” \$40,164.66 of that debt. All the disestablished debt related to periods prior to the period to which the convictions in the District Court related.
- e. On 27 February 2019, the Ministry said in a letter to XXXX that there was a “remaining overpayment of \$97,845.90 for the period 20 February 2009 to 10 May 2015, for which you have been convicted and sentenced in the Papakura District Court.” The letter said there was a right of review in respect of the overpayment of \$97,845.90.

The Authority’s jurisdiction

[40] It is unnecessary to embark on a discussion regarding the fact this Authority has a statutory jurisdiction, and so has no general powers of review or inquiry outside of its jurisdiction. This appeal relates to issues that arose prior to the commencement of the Social Security Act 2018 on 26 November 2018, so the law relating to the correctness of decisions is governed by the Social Security Act 1964. However, the decision XXXX challenges is the Ministry’s response to her application for review she lodged on 17 August 2018, and the Benefits Review Committee determined in May 2019. Accordingly, the right of appeal to this Authority is governed by the Social Security Act 2018.⁵ The statutory scheme that governs the scope of the jurisdiction for review commences with s 391 of the 2018 Act. It sets out a series of matters in a table where a person can make an application to the Ministry for a review by a Benefits Review Committee. Materially, the table refers to s 397(1)(a) to (g). Paragraph (a) effectively includes decisions or determinations of the Ministry under Parts 1 to 6 and Schedules 1 to 5 of the 2018 Act. Plainly, it does not include reviewing proceedings under the Crimes Act 1961, the conduct of prosecutions in the District Court, or reviewing the outcome of those prosecutions. It does include decisions relating to the correctness of decisions relating to benefit entitlement. The conduct of the prosecution was a matter for the District Court, and potentially grounds for an appeal to the High Court. The same applies to the

⁵ Schedule 1 of the Social Security Act 2018 contains the transitional and savings provisions.

claims of incompetence and misconduct of counsel. The enforcement of the reparations order is a matter for the District Court.

Review of the prosecution

[41] It is neither necessary nor appropriate to embark on a detailed discussion relating to the prosecution. This Authority has no role in reviewing prosecutions under the Crimes Act in the District Court. If XXXX wishes to embark on judicial review of the decision to prosecute her, that is a matter for the High Court. There is ample authority on such proceedings, it is clear the Courts are most reluctant to interfere in the discretion to prosecute, short of departure from elementary principles of prosecutorial propriety.

[42] It is clear to the extent XXXX seeks to have this Authority purport to hear and determine her complaints regarding any aspect of the prosecution, the endeavour is wholly misguided. She had legal remedies if her complaints had merit, and she should have pursued them in the appropriate fora. We note the District Court sentenced XXXX in May 2016, and she commenced the review in which she now asks this Authority to review the prosecution more than two years later. She no doubt received notice of her rights of appeal at the time of sentencing.

Review of the debt

[43] If there is any aspect of the matters XXXX has raised that does lie with the jurisdiction of the Authority, it is the quantum of the debt and/or issues relating to recovery of the debt. There is no real doubt the quantum of the debt, the recovery of the debt and the rate of repayment are all routine matters which are the subject of appeals to this Authority.

[44] We do not consider there is merit in the Ministry's claim that there is no right of appeal as the Benefits Review Committee did not confirm a decision under s 395 of the 2018 Act. The Benefits Review Committee said the substantive issue was "establishment of an overpayment of \$97,845.90".⁶ It reasoned that *res judicata* applied, and the correctness of the debt was established by audit processes,⁷ it embarked on an evaluation of the recoverability of the debt and concluded it was recoverable,⁸ and said, "the original decision should be

⁶ Para.s 1.1 and 6.1 of the Benefits Review Committee's report.

⁷ Para. 6.3 and 6.4 of the Benefits Review Committee's report.

⁸ Para. 6.18 concludes it is appropriate to recover the debt.

upheld". It appears beyond argument the Benefits Review Committee confirmed the decision to establish and recover the debt.

[45] The real question is whether the proceedings in the District Court make any or all of XXXX's claims *res judicata* or subject to issue estoppel. In that regard, it is appropriate to identify the issues:

a. The most fundamental issue is the foundation for the charges to which XXXX pleaded guilty. Components of the charges were that she was living in a relationship in the nature of marriage and received income. The charges involved failing to disclose information concerning those subjects as one element of at least two of the charges.

b. A second order factor is the quantification of the consequences of the non-disclosure. That was an element of the charges in that the failure to disclose necessarily involved obtaining a pecuniary advantage of \$1,000 in value. However:

i. The quantum potentially appeared not to be determined with precision, as the District Court sentencing notes refer to different figures,⁹ and the Ministry later claimed an amount higher than those figures.¹⁰ There was no reason for the District Court to reach a definitive quantification, as the gravity of the offending did not require that. Commonly sentencing for dishonesty must occur without the possibility of precise quantification. The reparation payments were limited to what XXXX could repay within 5 years, so it was in the order of 15% of the amount procured by the offending.

ii. The District Court did not and could not embark on a consideration of whether the whole of the liability should be recovered. It did give principled reasons for only recovering less than 15% of the total under a reparation order. However,

⁹ \$87,741.52 when considering the magnitude of the offending, but the reparation order was based on a higher figure \$88,091.50 of which \$1,650 had been paid. There may not be any inconsistency, as potentially the District Court considered an overall liability to the Ministry when evaluating the reparation order.

¹⁰ The amount of \$97,845.90 after "disestablishing" overpayments outside the period of the offending included in the prosecution. However, the Benefits Review Committee said by the time of its hearing the Ministry had amended the figure back to the lower of the two figures (\$87,741.52) identified by the District Court.

that legislation is quite different from the 1964 Act so that decision cannot be applied directly.

- iii. Similarly, the recovery rate is potentially affected by a need to give priority to the reparation order, but the District Court did not consider recovery rates under the 1964 Act (or 2018 Act to the extent it now applies).

[46] Accordingly, on any view the District Court proceedings did not touch on some issues that XXXX could potentially raise, and the Benefits Review Committee considered. However, the District Court convictions do clearly involve a conclusion that XXXX was in a relationship in the nature of marriage and received income for defined periods; and that it affected her benefit entitlement (at least to the extent of \$1,000). It is necessary to consider issue estoppel and *res judicata*.

[47] The Ministry cited the High Court's decision in *Chief Executive of the Ministry of Social Development v Batt*.¹¹ The decision concerns an appeal before this Authority following a criminal proceeding, and to that extent is directly applicable. However, there is a significant difference in that the *Batt* case involved a criminal proceeding in which there was a trial, unlike the guilty plea in this case. We will not seek to determine the difference, if any, between the two situations. However, we observe these are apparently key principles, evident in the *Batt* case:

- a. The foundation of *res judicata* and issue estoppel is that when an issue has been raised and distinctly determined between the parties, then neither party should be able to raise it again.¹² It is not evident that the means of resolution between the parties should alter the application of the principle:
 - i. Whether in a civil proceeding by not putting the issue in contention through pleading or having the Court determine it, or
 - ii. In a criminal proceeding on a guilty plea or through a finding of the Court.

¹¹ [2004] NZAR 180

¹² *Batt* [10] – [17]

The foundation of the principle seems to be preventing the proliferation of proceedings between the parties. In this case, XXXX had the opportunity of defending the charges in the District Court and did, and still does, have the right to challenge that process. Any limits on those rights likely reflect the merits of her position. This appeal cannot be used as a collateral means to challenge conclusions reached by a Court that had jurisdiction to reach the conclusions.

- b. There is no general principle that one legal proceeding is a general barrier to further proceedings between the parties. The limitation relates only to issues of fact and law that were considered and determined in the first proceedings.¹³ In the case of criminal proceedings, the focus will, as a general principle, be on the elements of the charges.¹⁴ Materially in the present case that applies to the existence of a relationship in the nature of marriage during the period to which the charges related, receipt of income in the period; and the quantum of the benefit payments dishonesty procured exceeded \$1,000.
- c. There were no issues as to the identity of the parties, or the nature of the proof required in the criminal proceedings that were a barrier to the principles applying.

[48] Accordingly, it appears to us that XXXX cannot seek to prove she was not in a relationship in the nature of marriage or that she did not receive income which disentitled her to benefits. It also appears that the criminal proceedings did not consider the statutory grounds that apply to recovery of the debt and did not determine the question of rate of recovery under the 1964 or 2018 Acts.¹⁵

[49] The area of ambiguity is whether the quantum of the debt was determined by the District Court. It was not an issue that is comparable with elements of a charge, where it must be established by proof or admission through a plea before a conviction is entered. That applied only to establish the quantum was more than \$1,000. Convictions for dishonesty often involve circumstances where an offender has through their own destruction of records and the like

¹³ *Batt* [19] – [25]

¹⁴ *Batt* [19], [20] and [23]

¹⁵ Potentially XXXX might say her ability to repay, to the extent that is relevant, was determined when the District Court determined she should only repay \$13,500 under the reparation order.

made accurate quantification impossible. In this case, the fact the District Court identified two different figures, and the Ministry later calculated a third figure gives little confidence that either the parties or the Court regarded the quantum as finalised. That was consistent with the orders the District Court made, there was no need to reach any conclusion as to the precise quantum.

How matters stand

[50] We will not embark on hearing evidence or considering issues relating to; the process in the District Court, whether XXXX was in a relationship in the nature of marriage, whether she received income, or whether she received benefit payments she was not entitled to receive. We will accordingly, as a starting point consider it settled that during the period to which the charges relate XXXX was not entitled to receive benefits.

[51] XXXX has had the benefit of a barrister as a McKenzie friend, and raised nothing beyond those issues that have been determined by the District Court.

[52] We cannot identify any concern XXXX has raised that goes beyond those issues, and there is no power or justification for this Authority to hear or determine those issues.

Conclusion

[53] We are satisfied there is nothing currently before us XXXX has raised that we can consider. We are conscious that we have dealt with matters on a preliminary basis, and this decision should assist XXXX to identify whether she does have matters we can and should consider.

[54] We appreciate the difficulties that parties may have in presenting appeals. In this case XXXX is fortunate to have the assistance of a lawyer as a McKenzie friend. We will set the appeal down for hearing. We encourage XXXX to set out any information she wants us to take into account in writing. However, that is not compulsory, she may attend the hearing and we will consider any information she presents. However, we will simply disregard any matters that are either outside the Authority's jurisdiction or have already been determined by the District Court proceedings.

[55] As we have indicated, there is nothing XXXX has currently raised that we can determine, and unless she can identify any live issues she should expect her appeal will be dismissed.

Timetable

[56] A hearing date and timetable will be set when New Zealand is at Alert Level 2 of the Covid-19 scale.

Dated at Wellington this 30th day of April 2020

S Pezaro
Deputy Chair

K Williams
Member

C Joe
Member