

[2018] NZSSAA 23

Reference No. SSAA 001/17  
SSAA 002/17

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

**AND**

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

## **BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY**

**Mr G Pearson** - Chairperson

**Mr K Williams** - Member

**Hearing** at INVERCARGILL on 3 & 4 October 2017

### **Appearances**

The Appellant in person

For Chief Executive of the Ministry of Social Development: M Wilson

## **DECISION**

### **Introduction**

[1] The Authority issued an interim decision. That decision reference is [2018] NZSSAA 007 and the decision should be read with this present decision. The appeal concerns the Ministry's determination that the appellants failed to report income and procured the overpayment of benefits. Accordingly, debts to the extent of the overpaid benefits have been established. The matters in contention were whether there was income, and, if so, how much, and whether any repayment was recoverable from the male appellant.

[2] The male appellant claimed his liability was discharged by his bankruptcy. The potential discharge of a debt by bankruptcy is affected by s 304(2) of

the Insolvency Act 2006. The provision states there is no discharge due to bankruptcy when a “debt or liability [was] incurred by fraud or fraudulent breach of trust to which the bankrupt was a party”. The Ministry claimed that applied to the male appellant in this case.

[3] The interim decision addressed those issues and concluded, based on the evidence before the Authority at the end of the hearing, that:

[3.1] The appellants alleged official misconduct by Ministry staff; and, to some extent, the police. However, their allegations had no foundation, and accordingly provided no answer to the claim they had been overpaid benefits.

[3.2] The male appellant's debt was not discharged by bankruptcy, as his debt was incurred by his fraud.

[3.3] The quantum of the overpayment for each appellant was \$21,039.22, subject to a potential reduction of \$1,792.15 income (in total). The adjustment concerned transactions with a third party.

[4] The appellants were given the opportunity in the interim decision to provide any further information that might justify a different outcome.

[5] The interim decision also requested that the Ministry determine the effect of the \$1,792.15 adjustment to the quantum of income.

[6] The interim decision indicated that failure to provide material justifying further examination of the issues, would result in the Authority issuing a final decision based on the information available, without a further hearing.

#### **The appellants' response to the interim decision**

[7] The tenor of the response from the appellants was to continue their criticism of this Authority, and a range of officials. They reiterated their claims regarding the amount of income, and that officials had prevented them quantifying the income and their expenses.

[8] The response included a range of material that may have some relevance to quantification and the circumstances. However, it does not include a narrative of the circumstances in which the appellants received income,

analysis of quantum, or another overview answering the Ministry's analysis of the overpaid benefit. The additional information lacked context, and it is not evident to us that there has been a genuine attempt to provide the information necessary to answer the Ministry's case.

### **The Ministry's response to the interim decision**

[9] The Ministry analysed the effect of the \$1,792.15 adjustment. The Ministry concluded that each of the appellants is liable severally for their overpayment of \$20,351.89 (\$40,703.78 in total). The \$1,792.15 was a reduction in income. The adjustment in benefit entitlement required calculation of the abatement, after considering the effect of the quantified income on all of the support the appellants were entitled to receive.

[10] The Ministry also considered the appellants' response to the interim decision. It took the position that the appellants had four years to produce evidence to support their position but had failed to do so by the end of the hearing; and again, failed to provide an adequate answer after the interim decision. Accordingly, the Ministry considered that the Authority should issue a decision in the terms indicated in the Authority's interim decision.

### **Discussion**

[11] The appellants have had every opportunity to explain the income they received, including identifying any expenses associated with producing that income. For the reasons discussed in the interim decision, the obvious implications of the evidence before the Authority are that the appellants engaged in business activity, received substantial income and obtained benefits by not declaring that income.

[12] The receipt of the income is proved by records, including bank records. The appellants have been evasive when asked to explain the nature of their business. That is against a background of police investigations regarding the legitimacy of some of the business transactions. The female appellant refused to give any evidence at all, and the male appellant was selective in the information he provided. The consistent theme of their response is that Ministry officials and the police have failed to disclose information and corruptly provided false information. The appellants have failed to prove those allegations; indeed, they have failed to provide any plausible basis on which we could conclude that there is substance in their allegations.

[13] An inescapable fact is that the appellants know what they did. We can only conclude that the appellants have been evasive because disclosing the true facts will not support their appeal. In these circumstances, such evidence that is available as the result of investigations must be the foundation for our decision; it is not necessary or appropriate to speculate. The Ministry has provided evidence of the overpayment and its quantum which we accepted in the interim decision. We are satisfied the evidence establishes:

[13.1] Each of the appellants was overpaid benefits of \$20,351.89 (\$40,703.78 in total). The figure takes into account the adjustment, and the appellants did not challenge the Ministry's calculations.

[13.2] The male appellant's debt due to an overpayment was incurred by his fraud; he failed to disclose his income to procure the overpaid benefits.

[14] It follows that we are satisfied the overpaid benefits are established as a debt, and the male appellant's debt has not been discharged by bankruptcy.

#### **Decision**

[15] The appeal is allowed to the extent of setting the debt for each of the appellants at \$20,351.89 (\$40,703.78 in total). In other respects, the grounds advanced to support the appeal are dismissed.

**Dated at Wellington** this 14<sup>th</sup> day of May 2018

**G Pearson**  
Chairperson

**K Williams**  
Member