

Decision No. [2015] NZSAAA 05

Reference No. SAA 005/14

IN THE MATTER

of the Education Act 1989 and the
Student Allowances Regulations
1998

AND

IN THE MATTER

of an appeal by XXXX of XXXX
against a decision of the Chief
Executive, Ministry of Social
Development

BEFORE THE STUDENT ALLOWANCE APPEAL AUTHORITY

Neil Cameron

HEARING on the papers

DECISION

The appeal is dismissed

REASONS

Overview

[1] This is an appeal against the decision of the Secretary on review to uphold StudyLink's decision to review and suspend or vary the appellant's entitlement to receive an allowance over a seventeen week period between May and November 2010 when his personal and/or combined income exceeded the relevant income limits. Following the Secretary's initial determination of the matter, the Ministry has, in a substituted decision, established a final overpayment of \$5,160.23 against him which it is now seeking to recover.

The issues on appeal

[2] From the appellant's submissions on the substituted decision it appears that he no longer disputes the overpayment now established against him for the period in question. Two issues remain.

- First, whether his partner at the time of the overpayment can be held responsible for half of the overpayment established against him, and
- Second, whether he can recover the costs he has incurred in disputing the initial decision and taking his case on review.

Factual background

[3] For the purposes of the substituted decision that is the subject of this appeal, the relevant facts can be simply stated. In 2010 the appellant applied for an allowance for the 2010 academic year. Since he was not working at the time, he declared a “*nil*” income. His partner declared an estimated weekly income of \$300 before tax. On the basis of this information he was approved an allowance at the “*partnered student with a combined income of less than \$384.02 per week*” rate. In early April 2010 he commenced work. He did not notify StudyLink of this. In late 2011 data matching revealed the true situation and, following referral to the Integrity Intervention Centre and the usual verification procedures, an overpayment was established against him for \$16,270.34 in June 2012 covering the period from May 2010 – July 2011. After considerable correspondence between the parties and consequent recalculations of the appellant’s income, this overpayment was reduced first to \$10,411.43 in July 2012 and then to \$9,719.53 a month later. In October 2013 the appellant applied to review the overpayment decision. After further correspondence and several attempts by the Ministry to arrange the Student Allowance Review Panel hearing he had requested, the Secretary eventually decided to deal with his application on the papers alone. On the 8th May 2014 she confirmed the decision of August 2012 establishing the overpayment of \$9,719.53. In August 2014 the appellant appealed.

[4] In November 2014 in the course of preparing its Regulation 37(2) Report the Ministry reconsidered the portion of the overpayment relating to 2011. It was decided that as the Ministry was by that time aware of at least some of the appellant’s business activities, StudyLink was at fault in approving his allowance without checking the veracity of his declaration that he would not be earning any income while studying in that year. As a result the overpayment established for 2011 was written off, reducing the amount in dispute to \$6,338.59. At the end of November the Ministry completed its Regulation 37(2) Report, in January the appellant responded to it and at the end of February the Ministry submitted its final response. The file was then submitted to the Authority for decision. Unfortunately even at this late stage confirmation of the appellant’s partner’s income figures for 2010 was still outstanding – the appellant having declined to provide them and the IRD having failed to respond to the Ministry’s requests for the relevant information. At the end of March, while the Authority’s decision was still in draft, the IRD belatedly responded with the requested income information. As a result the overpayment established against the appellant was recalculated and a new decision was substituted further reducing the overpayment to \$5,160.23. It is that substituted decision that is the subject of this appeal.

[5] Regulation 37(7) of the Student Allowances Regulations 1998 provides that where a new decision is sent to the Authority under subcl (6)(a), the appeal against the old decision is, without prejudice to the appellant’s right to appeal the new decision, “*considered to have been discontinued*”. Accordingly further submissions on the new decision were sought from both the Ministry and the appellant. The appellant responded on the 15th June indicating that he was still unhappy with the new decision and identifying the two issues summarised above as needing decision. The Ministry submitted a pro forma response on the 16th.

[6] The overpayment established against the appellant breaks down as follows:

Week	Total income	SA paid	SA due	Overpayment
24/5/10	\$745.21	\$363.52	\$0.00	\$363.52
31/5/10	\$1283.51	\$363.52	\$0.00	\$363.52
7/6/10	\$1283.51	\$363.52	\$0.00	\$363.52
14/6/10	\$1283.51	\$363.52	\$0.00	\$363.52
21/6/10	\$1283.51	\$363.52	\$0.00	\$363.52
28/6/10	\$550.04	\$363.52	\$0.00	\$363.52
30/8/10	\$214.59	\$363.52	\$348.66	\$14.86
6/9/10	\$214.59	\$363.52	\$348.66	\$14.86
13/9/10	\$214.59	\$363.52	\$348.66	\$14.86
20/9/10	\$435.90	\$372.80	\$0.00	\$372.80
27/9/10	\$734.15	\$370.06	\$0.00	\$370.06
4/10/10	\$734.15	\$370.06	\$0.00	\$370.06
11/10/10	\$734.15	\$370.06	\$0.00	\$370.06
18/10/10	\$734.15	\$370.06	\$0.00	\$370.06
25/10/10	\$734.15	\$370.06	\$0.00	\$370.06
1/11/10	\$734.15	\$370.06	\$0.00	\$370.06
8/11/10	\$734.15	\$370.06	\$0.00	\$370.06
TOTAL				\$5,188.92
Amount to be recovered				\$5,160.23

Relevant legislation

[7] Under subpart 1 of Schedule 2 of the Student Allowances Regulations 1998 married and partnered students are eligible for different rates of basic grant depending on their gross “*combined weekly income*”. For the whole of the period covered by this appeal the appellant was paid an allowance at the higher “*student with dependent partner*” rate. He also received an Accommodation Benefit.

[8] In the event of an appeal being successful before this Authority, the Authority has a power to make an order requiring the Ministry to reimburse the Authority for all or a portion of the costs incurred in the appeal (see s 305(5) of the Education Act 1989). The Authority has no power to make any award of costs in favour of the appellant in any such situation. Nor does it have any power to order compensation or make any other ancillary orders.

The basis for this appeal

[9] As noted above the appellant no longer appears to dispute the overpayment that is now established against him. In his initial appeal his major concern had been with the calculation of his partner's income. That has now been conclusively resolved and accordingly there is no longer any realistic basis on which he can dispute the Ministry's figures.

[10] However he does still dispute the charging of the whole overpayment to him since:

“the application of student allowance is a joint application by my ex-partner, each of us has using half of the allowance at that time as well, in that case she need to share the 50% of the final amount.”

[11] Secondly he argues that the “*unfair treatment*” he has received at the hands of the Integrity Intervention Centre has “*cost ... around 400 hours of working time*” which “*base[d] on the minimum rate of \$15/hour ... is \$6000 [of] lost of income*”. In his view the Authority should order the Ministry to reimburse him for this loss once the appeal is resolved.

The Ministry's Submissions

[12] In response to the appellant's suggestion that his ex-partner should be responsible for 50% of the overpayment established, and that StudyLink should now act to collect that sum from her, the Ministry simply says that it does not have the ability to do so and that if the appellant thinks he is entitled to it he will need to take it up with his ex-partner himself.

[13] As for reimbursing the costs the appellant says he has incurred in pursuing his case, the Ministry defends its handling of the various stages of the process and points out that, in any event, the Authority has no power to award such costs even if it should consider it appropriate to do so.

Discussion

[14] The overpayment now established against the appellant is, in the light of the revised income figures, correct. There is no longer any valid basis on which the appellant can dispute it and in his submissions on this appeal he makes no attempt to do so. The appeal must accordingly be dismissed. His remaining points cannot affect this outcome and can be briefly answered.

[15] First, his suggestion that his ex-partner should bear responsibility for half the overpayment on the basis that the allowance was paid to them jointly and she had the use of 50% of it is untenable. It is not simply, as the Ministry suggests, that StudyLink

has no power or responsibility for following up such matters, it is rather that the allowance the appellant received was paid to him and not to both him and his partner as joint recipients. Allowances are paid to students to support them during their study. It is a personal entitlement. The fact that partnered and married students are, where the combined income is low, entitled to a higher rate of allowance recognises that such a student has financial responsibilities which unmarried or unpartnered students do not. Paying them an allowance at a higher rate does not entitle the spouse or partner to anything. Nor can it impose any responsibility on them for sums received in error by the student. That is the student's responsibility and it is theirs alone.

[16] Secondly, whether or not the appellant's treatment by the Ministry since 2011 has been "*unfair*" – and I do not accept that it has – and whatever the impact of the delays and recalculations, it is quite clear that the Authority has no power whatsoever to order the reimbursement requested. Even if the appellant had been successful in his appeal, the only power possessed by the Authority is to order the Ministry to pay all or part of the Authority's own costs in an appropriate case. Such occasions will, for fairly obvious reason, be very rare. Indeed, so far as I am aware, the Authority has to date never felt the need to make such an order against the Ministry.

The appeal is dismissed. The substituted decision to reassess the appellant's allowance eligibility for the period between May – November 2010 and to establish an overpayment of \$5,160.23 against him as a result is upheld.

DATED at WELLINGTON this 25th day of June 2015

Neil Cameron
Student Allowance Appeal Authority