

[2021] NZSSAA 2

Reference No. SSA 10/20

IN THE MATTER of the Social Security Act 2018

AND

IN THE MATTER of an appeal by **XXXX** of Auckland against a decision of the Chief Executive that has been confirmed or varied by a Benefits Review Committee

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

S Pezaro - Deputy Chair

C Joe - Member

Hearing at Auckland on 14 October 2020

Appearances

The appellant in person and J Bioletti, counsel

Tanya Brayden, counsel for the Ministry of Social Development, and N Jaura, appeals officer

DECISION

Background

[1] XXXX (the appellant) appealed the decision of the Ministry of Social Development (the Ministry) on 1 August 2017 to establish and recover a debt of \$5,455.71 for the period 15 December 2001 to 16 April 2003 when the Ministry said the appellant rented a Housing New Zealand property but did not live in it and was not entitled to housing assistance, and an overpayment of \$243,907.90 for the period 15 December 2001 to 23 October 2016 when the Ministry said the appellant:

- [1.1] Was living in a relationship in the nature of marriage.
 - [1.2] Inherited property from her grandfather which meant that she had realisable assets which were above the threshold for grant of Accommodation Supplement and Temporary Additional Support.
 - [1.3] Failed to declare income.
- [2] The Ministry's decision was upheld by a Benefits Review Committee on 20 December 2019. The appellant then filed her notice of appeal. After the appeal had been filed, the Ministry reconsidered its decision and concluded that its decision on the relationship in the nature of marriage was incorrect. As a result, the Ministry deducted \$158,530.59 from the overpayment of \$243,907.90.
- [3] The appellant pursued the appeal in relation to the debt of \$5,445.71 arising from the housing assistance, being the difference between the amount paid by the appellant in income related rent and the market rent, and the balance of the overpayment being \$85,377.31.

Relevant law

- [4] The Social Security Act 1964 (the Act) applied when the Ministry made the decision under appeal and at the time relevant to the calculation of the overpayments. The appellant did not challenge the Ministry's interpretation of the law or regulations applied to assess her income, or the asset and income tests used to calculate her entitlement.

The scope of the appeal

- [5] Two telephone conferences were convened with the parties prior to hearing to establish the issues for determination. The first conference was convened before the Ministry had filed its report; at this time the Ministry had asked the appellant for further information. The second conference was convened on 26 August 2020. At that conference, Mr Bioletti confirmed that the appellant did not agree with the Ministry's revision of the overpayments. The appeal was scheduled for hearing on 14 October 2020 and Mr Bioletti undertook to file and serve by 16 September all submissions and evidence that the appellant would rely on at

hearing, her brief of evidence, briefs from any other witnesses, and a schedule showing which amounts owing, if any, were agreed by the appellant.

- [6] On 18 September Mr Bioletti filed a list of issues on appeal and an affidavit of the appellant. He stated that the following matters were at issue:
- Overpayment of income-related rent.
 - Overpayment due to net equity relating to Accommodation Supplement and Temporary Additional Support.
 - Overpayment due to income above threshold.
- [7] He confirmed that all issues in the Ministry's report were challenged.
- [8] In opening Mr Bioletti said that the appellant's affidavit was her sole evidence and she was not calling any witnesses. He submitted that, by virtue of the situation with the appellant's grandfather, who appointed the appellant kaitiaki, the appellant was not free to dispose of inherited assets.
- [9] However, Mr Bioletti then said that the appellant accepted that the section which her grandfather gave her did not have kaitiaki status and was a realisable asset. Mr Bioletti said she also accepted that the section was transferred to her on 30 August 2007, before her grandfather died, and that the value of the asset was over the asset value threshold applicable under the Act. Mr Bioletti therefore accepted that the appellant did not meet the asset test after 30 August 2007.
- [10] Mr Bioletti had no explanation for this change in position since he filed the list of issues on appeal four weeks earlier other than he had a serious illness and had been off his medication for several weeks.
- [11] Mr Bioletti said that there was no dispute with the figures used by the Ministry other than the manner in which it had treated payments the appellant received from her son.
- [12] The result of the appellant's concession about her ownership of the section was that the overpayment of Temporary Additional Support from 15 May 2009 to 22 July 2013 of \$7,670.02, the overpayment of Special Needs Grant from 7 April 2009 to 24 November 2015 of \$1,589.81 were accepted as well as overpayment

of Accommodation Supplement for the period 30 August 2007 to 23 October 2016.

[13] The amounts which remain in dispute are:

[13.1] The sum of \$5,445.71 being the difference between income related rent paid and market rent for the period 15 December 2001 to 16 April 2003.

[13.2] Overpayment of Domestic Purposes Benefit of \$2,211.80 for the period 10 November 2001 to 14 July 2013 and \$4,518.89 for the period 6 November 2009 to 28 October 2012.

[13.3] Overpayment of Sole Parent Support of \$2,248.66 for the period 15 July 2013 to 7 August 2016.

[13.4] Overpayment of Accommodation Supplement from 5 May 2003 to 29 August 2007, an amount to be calculated.¹

Issues

[14] The issues that we must determine in this appeal are:

[14.1] Whether the appellant was entitled to income related rent for the period 15 December 2001 to 16 April 2003.

[14.2] Whether the appellant was overpaid Domestic Purposes Benefit, Sole Parent Support, Accommodation Supplement, and Temporary Additional Support due to having assets and/or income over the allowable limits at the relevant time.

[14.3] If any overpayment is established, whether the Ministry is entitled to recover that amount.

The evidence

[15] Mr Bioletti did not conduct any examination of the appellant. Ms Brayden cross-examined but Mr Bioletti declined to re-examine. He made no submissions in

¹ 5.3.1 Ministry's Regulation 249 Report.

reply to the Ministry. The appellant's affidavit was accepted as read and she answered questions put to her by Ms Brayden and the Authority.

Overpayment of income-related rent

[16] The appellant was allocated a Housing New Zealand property in Hastings for the period 15 December 2001 to 16 April 2003. She accepted that she was working in Auckland for this period however Mr Bioletti submitted that her circumstances should be taken into account during this period. He said that she was in a relationship with a Mongrel Mob member and was trying to move herself out of that scenario, physically and mentally. He submitted that, just as the Ministry exercised discretion in overturning its decision that there was a debt as a result of a relationship in the nature of marriage, it should exercise discretion to waive any overpayment relating to this period.

[17] We asked Mr Bioletti to identify any discretion available to the Chief Executive in these circumstances. Mr Bioletti said he could not point to any discretion and was not sure that there was one. He also said he had not familiarised himself with the relevant law and only looked at the legislation to the extent that it was included in the Ministry's submissions.

Discussion

[18] Section 115 of the Public and Community Housing Management Act 1992 requires a tenant in social housing to promptly advise the agency responsible of any change in circumstances likely to result in higher rent or the person no longer being eligible for social housing. The appellant did not advise the Ministry that she was working during the relevant period or that she was not living in the house and therefore failed to meet her obligations to notify an increase in her income. She accepts the Ministry's record of her income for that period and its calculation of the market rent payable for that period of \$5,445.71. Accordingly we find that the Ministry is entitled to recover this amount.

Overpayment of Domestic Purposes Benefit, Sole Parent Support, Accommodation Supplement and Temporary Additional Support

[19] Two potential sources of income are relevant to the assessment of whether the appellant was paid above her entitlement to these forms of assistance – her income from paid employment and money paid to her account by her son.

Income from employment

- [20] Ms Brayden took the appellant through the Ministry's record of her employment (pages 186 to 200 of the Ministry's report) which showed the appellant's income from all sources from 5 November 2001 to 17 October 2016 (the income record).
- [21] The appellant stated that she declared her employment when she started work but could not identify any documents recording her declaration. She accepted that in the interview with the Ministry's investigator in 2016² she said she was studying for the previous four years. The appellant confirmed that she worked at various gyms and that her payments from those gyms were recorded in the income record. However the appellant also accepted that she told the investigator that she worked only for [Employer A]³ which was not correct as she had worked at other places.
- [22] In response to a question from Ms Brayden as to why she would not tell the investigator where she had been working, the appellant stated that it was because the investigator was aggressive, so she showed the same aggression in return.
- [23] The appellant confirmed she moved to Auckland in 2001 and worked part time for [Employer B]. She accepted the income record correctly showed her employment during the relevant period. She accepted that the Ministry's report correctly showed she worked full time for the period 17 November 2003 to 28 November 2004 and that she was on and off a benefit when in full time and part time work.

Payments from her son

- [24] The only payments that the appellant argued were not income were the payments she received from her son. From 16 March 2015 to 25 September 2016 her son paid between \$200 and \$220 per week to the appellant's account. The amount then reduced to \$100 per week and continued until 23 October 2016.
- [25] The Ministry treated these payments as income for the purpose of calculating the appellant's benefit entitlement at the time. Mr Bioletti submitted that these payments should not be treated as income because they were to repay a loan;

² Page [264] of the Ministry's report.
³ Page [270].

he argued that “effectively the vehicle was owned by the appellant”. He confirmed that there was no evidence of the value of the vehicle.

- [26] On 13 March 2020 the Ministry sent an email to Mr Bioletti asking for information from the appellant. The following request was included:

The appellant received rent of \$200 per week from 16/3/2015 to 25/9/2016 and then \$100 per week up to 23/10/2016. What was the source of the rent and for which property was this rent paid.

- [27] The appellant responded by email sent on 25 March 2020 that:

\$100 you are questioning was from my son and if you read file correctly then you'll see that I said I sold a car and he was paying it off (Evidence will be sent when I can get access to the scanner).

\$200 was listed as rent on my account by my son, the condition of my late grandfathers home after he passed was in desperate need of renovations, installation, maintenance and rates kept up with. I was not in a financial position to pay any of these, my son moved into the house to alleviate(sic) some of the pressure in carrying out maintenance duties. The little remaining money that was left went to my grandfathers tangihana and also the unveiling of my late brother and grandfather.

- [28] In a letter to the Ministry dated 13 April 2020, the appellant responded further to the Ministry's questions. In relation to the payments from her son, she confirmed that the \$100 payment was him paying off a car and the \$200 was to assist with the renovations needed on the house after her grandfather passed away and any remaining money went to her grandfather's and brother's tangihanga.

- [29] She provided a letter, also dated 13 April 2020, from her son who stated that:

I bought by mums Ford Laser rego XXX and still have it to this day. I was paying it off at \$100 per week, at times paying what I could afford.

I moved into my great grandfather's home after he passed to help pay the rates and insurance of the property. The condition of the house was in a bad state.....Mum was barely surviving herself in Auckland, I offered to pay \$200 to cover the rates and insurance and get things fixed.

[30] In her affidavit sworn 19 September 2020 the appellant stated that the weekly amount of \$200/\$220 paid by her son included payment for the vehicle (registration number provided) and that:

I owned this vehicle before my Grandfather and there was an agreement between myself and my son before my Grandfather became the owner of the vehicle. In addition, there were outgoings on the property that had to be paid.

[31] The Ministry produced the record of the car registration which showed that the appellant owned the car before it was transferred to her grandfather, and the vehicle was transferred to her son in July 2013 when her grandfather died.

[32] Ms Brayden questioned the appellant about the timing of the agreement for her son to purchase the vehicle. She asked the appellant why her son made payments for the car in March 2015, two years after the vehicle was transferred to him. She also asked the appellant why her son would pay for the vehicle before her grandfather's death, as the appellant deposed, when at that time the vehicle was owned by her grandfather. The appellant's evidence was that:

[32.1] She had an agreement with her son that he would buy the car but then had a dispute with him and he stopped payments, then said he would pay again. She transferred the car to her grandfather during this time, while her son continued to make payments. The reason she transferred the car to her grandfather was that he asked her to; he wanted to pay her for the car and give it to her son, but she didn't want her son to have the car for free.

[32.2] Her son made payments for the car while he did not own it because he was living with his grandfather at the time and was able to use the car.

[32.3] The appellant said the agreed price for the vehicle was \$3500 and was agreed a year before her grandfather died, in about 2012.

[32.4] The payments included the car and also a contribution to household bills such as rates, power, phone.

Discussion

[33] The appellant accepted that she was on and off a benefit while in part time and full-time work and did not dispute the record of her income during the relevant

period. Accordingly, we are satisfied that the Ministry's calculation of income she received from paid employment is correct.

- [34] There are obvious inconsistencies between the appellant's written and oral evidence, her son's letter, and the vehicle's registration record. The agreement described by the appellant in evidence whereby she gave the car to her grandfather and at the same time took payments from her son for it, two years before the payments appear on her bank statement, is not credible. On any version of her explanation for these payments, it appears that the amount paid exceeded the value of the vehicle, as given by the appellant. Mr Bioletti's submission that the money from the appellant's son was repaying a loan is not supported by any evidence. The only consistent aspect of the appellant's explanation for these payments is that to some extent they covered her outgoings on the house; any money received for this purpose is properly treated as income.
- [35] For these reasons, we find that the money the appellant received from her son was income, as defined in the Act. The Ministry was correct therefore to treat it as such when assessing her entitlement to benefits and supplementary assistance at the time of receipt.

Conclusion

- [36] The appellant conceded that she failed to declare a realisable asset in excess of the relevant asset tests for the assistance she received.
- [37] We have found that she received income in excess of the relevant income test limits during the relevant periods.
- [38] She therefore received benefits and supplementary assistance at rates above her entitlement.
- [39] The Ministry's calculation of the amounts of the resulting overpayments and amount owed in relation to housing assistance has not been challenged and we accept that it is correct.

Orders

- [40] The appeal is dismissed.

[41] The Ministry is entitled to recover from the appellant the sum of \$5,445.71 arising from housing assistance, and overpayments of \$85,377.31, a total of \$90,823.02.

Dated at Wellington this 12th day of March 2021

S Pezaro
Deputy Chair

C Joe
Member