

Reference no: SSAA 81/22

IN THE MATTER of the Social Security Act 2018

AND

IN THE MATTER of an Appeal by **XXXX** of Kaukapakapa,
against a decision of the Chief Executive
that has been confirmed or varied by a
Benefits Review Committee.

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

G Pearson (Chairperson)

M Dodd (Member)

T Tran (Member)

Date of hearing: 14 March 2023

Appearances: No appearance for the Appellant

Mr J Neumegen, counsel, and Ms N Jaura, appeals officer, for the
Ministry of Social Development

Decision: 16 March 2023

DECISION

Introduction

- [1] XXXX brought this appeal. He was not satisfied the Ministry of Social Development (the Ministry) correctly said he received an overpayment of his benefit. XXXX simply said in his notice of appeal that the Ministry made up a story that he owed \$2,700 and took an Accident Compensation Corporation (ACC) payment he should have received to repay that money. However, XXXX may not have fully understood what occurred. That is because the case involved a technical adjustment, not arrears from XXXX overclaiming a benefit or anything of that kind.
- [2] The Ministry filed a detailed report, as it must, when responding to an appeal to this Authority. The Ministry says XXXX had an overpayment of Jobseeker support benefit of \$2,777.60 in the period of 9 February 2016 to 13 April 2016, because of a backdated ACC payment. It applied a process of offsetting the ACC back payment against benefit payments.
- [3] Accordingly, the Authority must decide whether there is a basis for concluding either:
 - a. XXXX did not have an overpayment of Jobseeker support; and
 - b. If he was overpaid, whether the Ministry was entitled to recover it from the ACC arrears.

Facts

- [4] As XXXX has not provided any information other than saying the Ministry is wrong, we have relied on the Ministry's report. The Ministry says, correctly, that Jobseeker support is income tested. XXXX received ACC arrears; they are also treated as income for the purposes of the income test for Jobseeker support entitlement. Accordingly, he and his partner had their benefit entitlements reduced and the ACC back payment applied to compensate to that extent.
- [5] The adjustment is effectively a process of substituting one form of income for another (the main benefit and ACC payment are both taxable). This does not disturb the amount of tax due for the past period or trigger an obligation on a beneficiary to make a cash payment of overpaid benefit. The statutory process avoids income tax reassessments and recovery of over paid benefit through offsetting payments and reassessments of tax and benefit entitlements.

- [6] Any surplus after that process is completed is paid to the individual with the ACC arrears.

Discussion

- [7] It is not necessary to review the details of the relevant law, it does not involve discretionary decisions. The principles were reviewed by the High Court in *M v Chief Executive of the Department of Work and Income* (HC Wellington, AP335/01, 27 August 2002), and the Court of Appeal in *Goh v Chief Executive of the Ministry of Social Development* [2010] NZCA 110. The principles remain the same under the current legislation. The legislation also contains a mandatory obligation to recover overpayments in situations like this present case.
- [8] It necessarily follows that we cannot identify any basis to conclude that the Ministry was in error. There is nothing that allows us to find an error of computation, quantification, or principle in the way it approached XXXX's entitlements.

Decision

- [9] The appeal is dismissed.

Dated at Auckland this 16th day of March 2023

G Pearson
Chairperson

M Dodd
Member

T Tran
Member