

[2019] NZSSAA 01

Reference No. SSA 74/18

**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**

**S Pezaro** - Deputy Chair

**K Williams** - Member

**C Joe** - Member

**Hearing** at Wellington on 11 January 2019

### **Appearances**

XXXX by telephone

P Engels for the Ministry of Social Development

## **DECISION**

### **Background**

[1] XXXX and XXXX (“the appellants”) appeal a decision of the Ministry of Social Development, upheld by a Benefits Review Committee, to establish and recover an overpayment of \$1,099.28 for the period 28 April 2017 to 15 October 2017. It is the Ministry’s position that because the appellants did not declare a change of address from Christchurch to Whanganui, they were overpaid the accommodation supplement.

[2] The Ministry initially sought recovery of the sum of \$2,451.42 but reduced this amount after the appeal was filed. In the process of reviewing its decision the Ministry also extended the period over which it said an overpayment was made by dating the overpayment from 28 April 2017 rather than 25 May 2017 as previously. Both parties agreed at the hearing that although the earlier

period was not a matter raised before the Benefits Review Committee hearing, it was appropriate to consider this period as part of the current appeal.

### **Relevant law**

- [3] Section 65 of the Social Security Act 2018 (the Act) provides that the Ministry may pay an accommodation supplement in certain circumstances. Part 7 of Schedule 4 to the Act provides for the rate of accommodation supplement according to geographical area. Christchurch is Area 2 and Whanganui is Area 4. A higher supplement is payable in Christchurch than Whanganui.
- [4] Section 109(1)(c) of the Act obliges a beneficiary to notify a change or circumstances.
- [5] Section 113(1)(b) of the Act provides that a beneficiary must notify a change of circumstances if the change effects the rate of a benefit a beneficiary receives. Section 113(2)(a) provides a change in accommodation as an example of a change in circumstances.
- [6] Section 444(2) of the Act provides for exemptions to the Ministry's duty to recover debt where a debt was caused wholly or partly by an error to which the debtor did not intentionally contribute.

### **The case for the appellant**

- [7] The appellants claim that they notified the Ministry of their change of address. In an email to the Ministry, after the overpayment was established, the appellants provided two cellphone numbers and said that one of these numbers was used between February and June of 2016 to notify their move from Christchurch to Whanganui.
- [8] At the hearing XXXX challenged the authenticity of the Ministry's record of a phone sweep which it carried out to identify any calls from these numbers. However the appellants did not produce any records of calls made from their telephones. In evidence XXXX said that she had been unable to obtain these records but did not provide any evidence that she had attempted to do so. She confirmed that she had not provided the Ministry with any other telephone numbers which might have been used to make calls to the Ministry although she said that other numbers may have been used.

- [9] In response to a question from the Authority, XXXX said that she did not set up a mail redirection when she relocated.

### **The case for the Ministry**

- [10] Mr Engels said that the phone sweep was initially conducted for the period February to June 2016 and then from January to July 2017. The only record of a call from one of those numbers was nine and a half months prior to the appellants' move and the records showed that this call was to Study Link.
- [11] Mr Engels said that prior to leaving Christchurch, the appellants were receiving the maximum rate of accommodation supplement for that region. The overpayment now claimed is the difference in the maximum rate of accommodation supplement between the two regions.
- [12] Mr Engels said that because the Ministry has no record of a telephone call from the appellants advising the change of address it is the Ministry's position that it has not made an error which contributed to the overpayment and therefore it is bound to recover the amount overpaid.

### **Discussion**

- [13] We do not accept that the appellants made a reasonable attempt to obtain records of calls from the telephone they used to notify the Ministry of their change of address. Had they attempted to obtain this information and been unsuccessful we would have expected them to produce the records. It is generally possible to get mobile phone records going back over a significant period of time and the appellants were clear when they notified the Ministry that they used two numbers for these calls. Even if they later realised they made the calls from different numbers, they should have been able to either obtain the records, or provide evidence of attempting to do so.
- [14] We have no reason to doubt the authenticity of the telephone records produced by the Ministry which are the best available evidence of any calls made by the appellants.
- [15] Accordingly, we find that the appellants failed to notify the Ministry that they were changing address. We are satisfied that the appellants knew and understood their obligation to notify the Ministry of their change in address particularly as the assistance they were receiving was targeted to their accommodation costs.

[16] The appellants have not challenged the calculation of the amount claimed as an overpayment.

[17] For these reasons, we find that the Ministry is entitled to recover the amount of \$1,099.28 from the appellants.

**Order**

[18] The appeal is dismissed.

**Dated at Wellington** this 15th day of January 2019

**S Pezaro**  
Deputy Chair

**K Williams**  
Member

**C Joe**  
Member