

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV-2008-485-2391

BETWEEN

IRENE GOH
Appellant

AND

THE CHIEF EXECUTIVE OF THE
MINISTRY OF SOCIAL
DEVELOPMENT
Respondent

Hearing: 30 September 2009

Appearances: Appellant in person, M Murphy as McKenzie Friend
DA Ward for Respondent

Judgment: 30 September 2009

JUDGMENT OF ASHER J

I Goh, 2-18 Harding Ave, Mt Wellington, Auckland
Crown Law, PO Box 2858, Wellington 6140

Introduction

[1] This is an application for leave to bring an appeal against my judgment delivered on 30 June 2009, where I determined a question of law. The question of law was:

Did the Authority err in law in finding that s 81 empowered the Chief Executive to retrospectively review the appellant's benefit and treat the appellant's ACC compensation as income for the period 15 March 1998 to 11 September 2005, in circumstances where the compensation payments were paid as a lump sum to cover an earlier period in which compensation payments had been incorrectly denied?

I answered the question "No", and dismissed the appeal.

[2] In her submissions in support of her application for leave Ms Goh states the issue that she seeks to argue in the Court of Appeal. It is:

Was the finding of the High Court correct that a backdated single compensation payment under the operation of section 71A(4) of the Social Security Act 1964 caused a debt of \$48,404.56 for the period of 15 March 1998 to 11 September 2005?

[3] My conclusions on the essential issue were set out at [31]-[32] as follows:

[31] When the Chief Executive's power to review and recover benefits is exercised in a situation where s 71A of the SSA does not apply, compensation paid retrospectively to cover a past period should be treated as income for the period when the right to payment was acquired. This is consistent with the approach to the meaning of income in the relevant statutes and authorities. It is also consistent with the purposes of the Act which involve taking into account the other financial support a claimant is receiving in determining the need for financial help.

[32] Therefore, the Authority did not err in law in finding that s 81 empowered the Chief Executive to retrospectively review Mrs Goh's benefit, and treat Mrs Goh's ACC compensation as income for the period from 15 March 1998 to 11 September 2005. If ACC had paid compensation from 15 March 1998, then its weekly or fortnightly receipt would have constituted income. The fact that it was paid late does not change its character, or the period to which it relates.

I had earlier made this observation as to the merits of Ms Goh's position, at [21]:

... [The appellant] is, in terms of the provisions of the Act, seeking a windfall. She seeks to have the benefit of two lots of payments when, if all proper steps had been taken, she would have only been entitled to one.

Test to be applied

[4] Section 12R of the Social Security Act 1964 provides that the provisions of s 144 of the Summary Proceedings Act 1957 apply. Section 144 of the Summary Proceedings Act 1957 states that a party may, with leave of the High Court, appeal to the Court of Appeal on a question of law. Leave may be granted under s 144(2) if in the opinion of the Court:

... the question of law involved in the appeal is one which, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision.

These words are very clear in their meaning and that meaning is not to be diluted.

[5] In *R v Slater* [1997] 1 NZLR 211 (CA) at 215, the Court of Appeal observed that s 144:

... was not intended to provide a second tier of appeal from decisions of the District Court in proceedings under the Summary Proceedings Act.

As Chambers J observed in *Dennis v Chief Executive of the Department of Work and Income* HC AK AP5-SW03 (PL) 17 April 2003 at [22], in relation to an appeal:

A fortiori, s 12R of the Social Security Act, incorporating s 144 of the Summary Proceedings Act, was not intended to provide a third tier of appeal from departmental decisions under the Social Security Act.

Should leave be granted?

[6] My decision turned on the interpretation of a number of sections in the relevant statutes, and a number of authorities. It was a decision on the question of law that had been posed. I accept that the proposed question now put by Ms Goh for the Court of Appeal is also a question of law, although it appears, in form at least, to be a different question than the one which I determined. It is, indeed, difficult to discern with precision the point of law that Ms Goh seeks to argue. This is relevant

in considering the discretion to grant leave, as the question of law must be one capable of bona fide and serious argument.

[7] In *Waller v Hider* [1998] 1 NZLR 412 (CA) at 413, a decision involving a different but similar appeal regime, it was observed:

The appeal must raise some question of law or fact capable of bona fide and serious argument in a case involving some interest, public or private, of sufficient importance to outweigh the cost and delay of the further appeal.

[8] The decision here was reached after the consideration of a number of relevant sections and authorities, all of which approached the question of the treatment of income in a similar way, whereby compensation paid retrospectively to cover a past period should be treated as income for the period when the right to payment was acquired.

[9] The decision related to the application of s 71A(4). That provision only applies to certain situations that existed immediately before 1 July 1999, and that have continued beyond that date. Ten years have already elapsed since that qualification date. The section will only apply, therefore, to a narrow band of persons, and the numbers in that band will reduce over time to zero. I accept the respondent's submission that the group already would be relatively small.

[10] In summary:

- a) The point Ms Goh seeks to argue is unclear.
- b) Ms Goh cannot pray in aid any personal injustice.
- c) The decision is in accord with the approach to the meaning of income in the relevant statutes and authorities.
- d) No point of wide public significance arises, and the decision is likely to affect only a narrow and diminishing band of persons.

[11] For these reasons I conclude that the question of law is not one of general or public importance warranting the grant of leave, and that there is no other reason which would warrant its grant.

Result

[12] The application for leave to appeal to the Court of Appeal is dismissed.

Costs

[13] Costs are not sought and there is no order as to costs.

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Asher J