

IN THE SUPREME COURT OF NEW ZEALAND

**SC 89/2006
[2007] NZSC 8**

BETWEEN

PATRICIA LINDA OWENS
Applicant

AND

THE CHIEF EXECUTIVE OF THE
MINISTRY OF SOCIAL
DEVELOPMENT
Respondent

Court: Elias CJ, Blanchard and Anderson JJ

Counsel: A P Crabb for Applicant
U R Jagose for Respondent

Judgment: 20 February 2007

JUDGMENT OF THE COURT

The application for leave to appeal is declined.

REASONS

[1] When a person receives a social security benefit but is not entitled to it the chief executive of the responsible department has a discretion under s 86 of the Social Security Act 1964 to recover it as a debt due to the Crown or to authorise its provisional writing off.

[2] The applicant was paid an accommodation allowance to which she was not entitled. She owned a house which she bought with a legacy she received whilst being paid the allowance. The chief executive of the relevant department, WINZ, decided not to write off the debt of \$10,040 but to recover it.

[3] At the relevant time s 86(9A) of the Act provided:

Notwithstanding anything to the contrary in this section, the chief executive may, in the chief executive's discretion, authorise the provisional writing-off of a debt which arose as a result of an error, made by an officer or employee of the Department, not intentionally contributed to by the debtor if the chief executive is satisfied that the person receiving the amount so paid in error did so in good faith and has altered his position in reliance on the validity of the payment that it would be inequitable in all the circumstances, including his financial circumstances, to require payment.

[4] The chief executive took into account, amongst other things, the relative faults of the department and the applicant and that the applicant's financial position had improved because the equity in the house had increased by \$55,000 and some of this could be used to repay the debt. The applicant argues that in deciding whether a debt should be written-off, the relative faults of the department and the beneficiary are not relevant considerations. Further, that the statutory test whether repayment is inequitable requires that there be a connection between an alteration of position and the factors relied on to show that repayment would not be inequitable.

[5] The chief executive's decision has been upheld by the Benefits Review Committee, the Social Security Appeal Authority, the High Court and the Court of Appeal. These decisions are plainly correct in law. The words in s 86(9A) "inequitable in all the circumstances, including ... financial circumstances" require a broad view of any facts, including financial circumstances, which bear on the fairness of writing-off or not writing-off in any particular case. It is plain that they do not need to be connected to the change of position in order to be relevant to the question of fairness, although they may be in some cases. It is also obvious that in considering issues of fairness, relative fault in connection with the unauthorised benefit may sometimes be relevant.

[6] We are satisfied the applicant's case is not appropriate for consideration by this Court. It has no realistic prospect of success. The application for leave to appeal is dismissed with costs of \$1,500 to the respondent.

Solicitors:
Quinn Law, Auckland for Applicant
Crown Law Office, Wellington