



moment for present purposes. The current position is that the deductions remain on hold until determination of this application.

[2] The applicant has, on a number of occasions, exercised rights of challenge to the original s 86 decision. This has involved consideration by the Benefits Review Committee, an appeal to the Social Security Appeal Authority which was dismissed on 23 February 2010,<sup>1</sup> a successful appeal to the High Court which, in a decision of 4 April 2012, directed a rehearing of her appeal by the Social Security Appeal Authority,<sup>2</sup> a reconsideration by the Social Security Appeal Authority which again dismissed her appeal, this time in a decision given in 16 December 2013,<sup>3</sup> a further appeal to the High Court which was dismissed by Faire J on 29 October 2015<sup>4</sup> and unsuccessful applications to the High Court<sup>5</sup> and Court of Appeal for leave to appeal against the 29 October 2015 judgment.<sup>6</sup> In dismissing the second of these two applications, the Court of Appeal gave a reasonably elaborate judgment, albeit that counsel for the applicant maintains that the Court did not consider all the proposed grounds of appeal.

[3] This Court not having jurisdiction to entertain an appeal from the leave decision of the Court of Appeal, the applicant now seeks leave to appeal direct from the High Court judgment of 29 October 2015. Leave for such an appeal may not be granted unless we are satisfied that “there are exceptional circumstances” warranting a direct appeal to the Supreme Court.

[4] The Appeal Authority was required to conduct an evaluative exercise in the context of a statutory scheme which (a) contemplates recovery by deduction and the associated likelihood of hardship and (b) extends to all overpayments and not merely those obtained by fraud. In the course of this exercise, the Appeal Authority referred to the applicant’s personal circumstances. The applicant’s complaints come down primarily to the contentions that the Appeal Authority placed too much weight on what it saw as the policy consideration that fraudulently obtained overpayments be

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<sup>1</sup> *Harlen v Chief Executive of the Ministry of Social Development* [2010] NZSSAA 2.

<sup>2</sup> *Harlen v Ministry of Social Development* [2012] NZHC 669, [2012] NZAR 491.

<sup>3</sup> *Harlen v Chief Executive of the Ministry of Social Development* [2013] NZSSAA 108.

<sup>4</sup> *Harlen v Chief Executive of the Ministry of Social Development* [2015] NZHC 2663.

<sup>5</sup> *Harlen v Chief Executive of the Ministry of Social Development* [2016] NZHC 1954.

<sup>6</sup> *Harlen v Chief Executive of the Ministry of Social Development* [2016] NZCA 648.

recovered and too little weight on the applicant's personal circumstances (which included the hardship that such recovery would impose and the sentence of imprisonment she had served). These complaints fell to be assessed in the context of a right of appeal confined to questions of law identified in the case stated. They were fully reviewed in the High Court decision and again carefully considered in the Court of Appeal decision. We see nothing in the way in which the case was addressed by those Courts as warranting the conclusion that the exceptional circumstances test has been satisfied.

[5] We should note as well that the applicant's case has been considered under the legislative scheme as it was in 2000. This scheme has subsequently been amended on a number of occasions. Indeed, under s 86 as it now stands, the chief executive is under a positive duty to recover overpayments. The decision of the High Court is thus of limited precedential value.

[6] Accordingly, the application for leave to appeal is dismissed.

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