

Department of Social Welfare and suspending debt recovery action while disputing the debt through the appeal process

Legislation	Ombudsmen Act 1975, Social Security Act 1964
Ombudsman	Anand Satyanand
Case number(s)	W38803, W40259
Date	2000

Failure to suspend debt recovery action pending appeals—reference to Social Security Appeal Authority decisions—Department’s general policy to suspend recovery action—policy applied on a case by case basis—discretion not to suspend recovery should not be fettered—application of policy should be consistent nationwide—circular outlining policy issued—manual to be revised

A complaint was received from two beneficiary advisory organisations. They complained about decisions of the former Department of Social Welfare’s New Zealand Income Support Service (now known as the Ministry of Social Development’s Work and Income) to recover debts from benefit payments while disputing the debts. The advisory organisations supported their complaints by referencing recent decisions of the Social Security Appeal Authority which held that repayments of debts ought to be suspended pending the outcome of appeals.

The Department responded by saying that it was the usual practice for debt recovery to cease pending the outcome of the review. The Department maintained that the Social Security Act did not prevent the collection of a debt once a person had filed for a review, although the Act did prevent the recovery of any penalty until the review had been completed. The Department drew attention to a Ministerial Directive relating to deduction notices which specifically prevented the issue of a deduction notice once a person applied for a review of a decision. It maintained that the Act did not require the withdrawal of a deduction notice if one was in force. The Department argued there was no blanket Social Security Appeal Authority ruling directing that debt recovery cease in every case where a person filed a review or appeal. The Department also expressed concern that the debt recovery process could be frustrated by the

disputing of a debt without any collateral requirement to seek a formal review of the debt by a Benefit Review Committee.

While it was acknowledged that there was no blanket ruling on the issue, the Appeal Authority decisions appeared to provide a guide to the Authority's interpretation of the legislation, namely, that the recovery process should cease until the dispute had been resolved. The Department's general policy of suspending recovery action where the whole of a debt is in dispute was accepted, as was its view that its discretion to apply the policy on a case by case basis ought not to be fettered. However, there did not appear to be a consistent application of the policy nationwide. The Department was therefore asked to ensure that the policy was clearly understood on a national basis.

The Department undertook to revise the debt manual. It also confirmed that a circular would be distributed pointing out that the standard practice of the policy was to cease recovery while a review was underway. The investigation was concluded on the basis that the Department's actions provided a satisfactory solution to the complaints.

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