

IN THE SUPREME COURT OF NEW ZEALAND

SC 103/2015
[2015] NZSC 176

BETWEEN DAVID OWEN CREQUER
Applicant

AND CHIEF EXECUTIVE OF THE
MINISTRY OF SOCIAL
DEVELOPMENT
Respondent

Court: Elias CJ, Glazebrook and Arnold JJ

Counsel: Applicant in person
I Carter and N Bailey for Respondent

Judgment: 18 November 2015

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay the respondent costs of \$2,500.

REASONS

[1] The applicant, Mr Crequer, appealed to the Social Security Appeal Authority against two decisions of the Ministry of Social Development, the first being the decision to grant him a Domestic Purposes Benefit rather than a Sickness Benefit and the second concerning the correct commencement date of the Domestic Purposes Benefit. His appeals were unsuccessful.

[2] An appeal against a decision of the SSAA to the High Court is available, but only on a question of law.¹ Mr Crequer wished to appeal and accordingly submitted a draft case stated to the SSAA. The Chair of the SSAA settled the case, identifying two questions of law, and sent it to the High Court. Mr Crequer took exception to

¹ Social Security Act 1964, s 12Q.

amendments made to his draft by the Chair in the course of settling the case. In a judgment dealing only with Mr Crequer's objections to the case stated, Gendall J dismissed them.² The Judge concluded that the process followed by the Chair was in accordance with the legislation and that the case as settled "perfectly captures the issues in dispute".³

[3] Mr Crequer filed an appeal against Gendall J's decision in the Court of Appeal and sought a waiver from the requirement to pay the filing fee. The application was based solely on the ground that the appeal concerned a matter of genuine public interest. The Deputy Registrar refused to grant him a waiver, and Wild J upheld that decision.⁴ The Judge considered that Mr Crequer's challenge to the Chair's determination as to the way the case stated should be formulated did not raise any issue of public importance.⁵ Mr Crequer now seeks leave to appeal to this Court against Wild J's decision.

[4] Under reg 5 of the Court of Appeal Fees Regulations 2001, the payment of a filing fee may be waived either where the applicant is unable to pay the fee or where the appeal concerns a matter of genuine public interest and is unlikely to be commenced or continued unless the fee is waived. Mr Crequer argues that the matters at issue in his appeal to the Court of Appeal are matters of genuine public interest so that a fee waiver should have been granted. In particular, he submits that the Chair was not entitled to substitute his (Mr Crequer's) versions of the questions of law at issue.

[5] We are not satisfied that it is necessary in the interests of justice that we hear and determine this appeal. We do not consider that the appeal raises any issue of general or public importance, or that there is a risk of a substantial miscarriage of justice:

² *Crequer v The Chief Executive of the Ministry of Social Development* [2015] NZHC 1602, [2015] NZAR 1395.

³ At [41].

⁴ *Crequer v The Chief Executive of the Ministry of Social Development* [2015] NZCA 365.

⁵ At [11]–[14].

- (a) Under s 12Q of the Social Security Act 1964, the appellant must submit a draft case stated,⁶ which the Chair must then settle “after hearing the parties if he considers it necessary to do so”.⁷ Under this provision, the Chair is not obliged to accept the appellant’s formulation of the case stated, but rather must reach his or her own view of the appropriate formulation.⁸
- (b) More importantly for present purposes, as this Court noted in *Crequer v Chief Executive of the Ministry of Social Development* where this issue also arose, under r 21.12(2) of the High Court Rules, the High Court has the power to amend the case at the hearing of the substantive appeal should the need arise.⁹

[6] The application for leave to appeal is dismissed. The applicant must pay costs of \$2,500 to the respondent.

Solicitors:
Crown Law Office, Wellington for Respondent

⁶ Social Security Act, s 12Q(4).

⁷ Section 12Q(6).

⁸ See *Crequer v Chief Executive of the Ministry of Social Development* [2012] NZHC 2575, [2012] NZAR 951.

⁹ *Crequer v Chief Executive of the Ministry of Social Development* [2014] NZSC 119, at [1]. The Court may also send the case back to the relevant Tribunal for amendment: see r 21.12(1).