

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**I TE KŌTI PĪRA O AOTEAROA**

**CA742/2021  
[2022] NZCA 92**

BETWEEN                      DIRECTOR-GENERAL OF HEALTH  
Applicant

AND                              PETER HUMPHREYS  
Respondent

Court:                          Cooper and Courtney JJ

Counsel:                      S V McKechnie and T J Bremner for Applicant  
P Cranney for Respondent

Judgment:                    29 March 2022 at 2.15 pm  
(On the papers)

---

**JUDGMENT OF THE COURT**

---

**The application for leave to appeal is granted in respect of the questions set out in [6].**

---

**REASONS OF THE COURT**

(Given by Cooper J)

[1]     The Director-General of Health for the Ministry of Health (Ministry) seeks leave to appeal the decision of the Employment Court in *Humphreys v Humphreys*.<sup>1</sup>

[2]     The Employment Court judgment concerned the funding mechanisms which allow payment of carers who live with and care for disabled family members. At the

---

<sup>1</sup>     *Humphreys v Humphreys* [2021] NZEmpC 217.

relevant times there have been two funding mechanisms, namely Funded Family Care (FFC) and Individualised Funding (IF). The latter applied after FFC was disestablished in mid-2020.

[3] Those funding mechanisms were the subject of consideration in an earlier decision of the Employment Court, *Fleming v Attorney-General*.<sup>2</sup> In that case the Employment Court declared that the Ministry had engaged Ms Fleming as the carer of her severely mentally and physically disabled son. This Court has granted leave to appeal against that decision on questions of law under s 214 of the Employment Relations Act 2000.<sup>3</sup>

[4] The present application raises similar questions of law in relation to the application of the same funding mechanisms. Mr Humphreys is the father of an adult daughter diagnosed with Angelman syndrome when she was three years old. She is assessed as having very high disability needs which will continue throughout her life. Mr Humphreys challenged the decision of the Ministry to treat his daughter as his employer for the purposes of the funding mechanisms.

[5] The Employment Court held that:

- (a) Pt 4A and (implicitly) s 88 of the New Zealand Public Health and Disability Act 2000 did not constrain the Court's ability to assess the employment relationship during the FFC period.<sup>4</sup>
- (b) Mr Humphreys had been engaged by the Ministry as a homeworker and was therefore a Ministry employee.<sup>5</sup>

---

<sup>2</sup> *Fleming v Attorney-General* [2021] NZEmpC 77.

<sup>3</sup> *Attorney-General v Fleming* [2021] NZCA 510.

<sup>4</sup> *Humphreys v Humphreys*, above n 1, at [50]–[52]. The Court did not refer to s 88, which it had discussed in *Fleming v Attorney-General*, above n 2, at [52] but followed the same approach as it took that case.

<sup>5</sup> At [100].

- (c) As an employer, the Ministry's obligations include remunerating Mr Humphreys appropriately for his work, as assessed by reference to this Court's decision in *Idea Services Ltd v Dixon*.<sup>6</sup>

[6] Leave to appeal is sought in respect of three questions of law said to arise from the Employment Court's judgment. They are:

- (a) Did the Employment Court err in its assessment of the effect of pt 4A and s 88 of the New Zealand Public Health and Disability Act 2000 (PHDA) on the Court's ability to assess the employment relationship under Funded Family Care (FFC)?
- (b) Was Mr Humphreys a "homeworker" as defined by s 5 of the Employment Relations Act 2000 and therefore an employee of the Ministry of Health when he cared for his daughter during:
  - (i) the FFC Period (April 2014 to August 2020)?
  - (ii) the Individualised Funding (IF) Period (August 2020 onwards)?
- (c) Was the Employment Court wrong in finding that the Court of Appeal's approach in *Idea Services Ltd v Dickson* [2011] NZCA 14, [2011] 2 NZLR 522 applies to an assessment of hours worked by Mr Humphreys as a homeworker for:
  - (i) the FFC Period?
  - (ii) the IF period?

[7] The second and third of the proposed questions are effectively the same as questions for which this Court has already granted leave in *Attorney-General v Fleming*. The first question arises in this case only because there was funding under the FFC scheme. The Director-General says that this meant the Employment Court

---

<sup>6</sup> At [118], referring to *Idea Services Ltd v Dickson* [2011] NZCA 14, [2011] 2 NZLR 522.

should have considered the implications of s 88(1)(a) of the New Zealand Public Health and Disability Act 2000 and what was said about that provision in this Court's judgment in *Chamberlain v Minister of Health*.<sup>7</sup> Mr Cranney for Mr Humphreys, in opposing leave, submits that the Director-General's stance overlooks the fact that the payments under the scheme were not made to Mr Humphreys but to his daughter, but we are satisfied that is an issue that ought to be considered at a substantive hearing.

[8] We are satisfied that the proposed questions raise genuine questions of law, and that they are of sufficient public importance to be submitted to this Court for decision.<sup>8</sup> The existing grant of leave in *Fleming* supports that conclusion.

[9] We accordingly grant leave to appeal in respect of the questions of law set out in [6] above.

[10] We direct the registrar to set the appeal down for hearing at the same time as the appeal in *Attorney-General v Fleming*.

Solicitors:  
Simpson Grierson, Wellington for Applicant  
Oakley Moran, Wellington for Respondent

---

<sup>7</sup> *Chamberlain v Minister of Health* [2018] NZCA 8, [2018] 2 NZLR 771 at [36].

<sup>8</sup> Employment Relations Act 2000, s 214.