

[2016] NZSSAA 057

Reference No. SSA 174/15

IN THE MATTER

of the Social Security Act 1964

AND

IN THE MATTER

of an appeal by **XXXX** of
Auckland against a decision of a
Benefits Review Committee

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

Ms M Wallace - Chairperson
Mr K Williams - Member
Lady Tureiti Moxon - Member

HEARING at AUCKLAND on 9 March and 10 May 2016

APPEARANCES

The appellant in person
Ms P Siueva for the Chief Executive of the Ministry of Social Development

DECISION

Introduction

[1] The appellant appeals against a decision of the Chief Executive upheld by a Benefits Review Committee:

- (i) To suspend payment of New Zealand Superannuation to the appellant from 26 August 2015 on the basis that he had not taken steps to test his eligibility for a pension from the Singapore Central Provident Fund (CPF).
- (ii) To deduct payments received by the appellant from the CPF from his entitlement to New Zealand Superannuation from 18 November 2015.

Background

[2] The appellant is 66 years of age. He is married. He is a citizen of Singapore. He first arrived in New Zealand on 8 January 1998 and was granted permanent residence in New Zealand in June 2000.

[3] The appellant was granted Jobseeker Support on 2 December 2013. He was then granted New Zealand Superannuation on 9 October 2014. His wife was included in the grant as a non-qualified spouse.

[4] The Ministry first asked the appellant to test his eligibility for a pension from Singapore after being granted Jobseeker Support, in January 2014.

[5] Between the Ministry's first request in January 2014 and August 2015, there were a series of communications between the Ministry requesting the appellant test his eligibility for a Singapore pension, and the appellant, claiming that the CPF was not a pension fund and that he was not in receipt of an overseas pension.

[6] By letter dated 30 June 2015 the Ministry requested that the appellant test his entitlement to a pension from the CPF by writing to them and taking the necessary steps involved to apply for the payments he may be entitled to, or alternatively to provide verification of any pension he was already receiving. He was requested to provide the necessary information by 21 July.

[7] On 2 July 2015 the appellant provided the Ministry with a letter confirming that he was not entitled to a Singapore Government pension. However, this was not the pension for which the Ministry was asking the appellant to test his eligibility.

[8] No confirmation from the appellant regarding his entitlement to a CPF pension was forthcoming and on 6 August 2015, the appellant was given formal notice that his New Zealand Superannuation would be suspended from 26 August 2015. He was advised that as soon as he provided a copy of a letter written to the CPF his New Zealand Superannuation would be resumed.

[9] The appellant sought a review of the decision contained in this letter. The matter was reviewed internally and by a Benefits Review Committee on 27 October 2015. The Benefits Review Committee upheld the decision of the Chief Executive. The appellant then appealed to this Authority.

[10] In the meantime, in September 2015 the appellant provided a letter from the CPF confirming that he was entitled to receive \$668 per month from the CPF. As a result, payment of New Zealand Superannuation to the appellant was resumed.

[11] On 13 November 2015, the Chief Executive made a decision to commence deducting the payments of \$668 received from the CPF from the appellant's entitlement to New Zealand Superannuation from 18 November 2015.

[12] The appellant was also requested to provide verification from the CPF Board of the date that his CPF payments commenced. At the date of the Section 12K Report this information had not been received by the Ministry.

[13] The appellant sought a review of decision to deduct his CPF payments from his entitlement to New Zealand Superannuation. The decision of 13 November 2015 was considered by a Benefits Review Committee on 29 January 2016. The Benefits Review Committee upheld the decision of the Chief Executive. The appellant then also appealed this decision to the Authority.

Legislation relevant to this appeal

[14] Section 69G of the Social Security Act 1964 (the Act) requires every applicant for New Zealand Superannuation to establish to the satisfaction of the Chief Executive that they or their spouse or partner have taken all reasonable steps to obtain any overseas pension or benefit to which either of them may be entitled, or that may be granted to either or both of them.

[15] Section 69G(2) & (3) provide the Chief Executive a discretion to give written notice to an applicant for a benefit or for New Zealand Superannuation to take all reasonable steps to obtain an overseas pension to which that person may be entitled, within a specified period.

[16] Section 69G(4) provides:

(4) Where a person does not comply with a notice given by the chief executive under subsection (2) or subsection (3), the chief executive may—

(a) refuse to grant the benefit applied for by the applicant:

(b) suspend, from such date as the chief executive determines, the benefit granted to the beneficiary until either—

(i) the beneficiary provides information establishing, to the satisfaction of the chief executive, that the beneficiary and the spouse or partner of the beneficiary have taken all reasonable steps to obtain any overseas pension to which either or both of them may be entitled or that may be granted to either or both of them or, as the case requires, that the beneficiary has taken all reasonable steps to obtain any overseas pension to which any dependant of the beneficiary may be entitled or that may be granted to any dependant of the beneficiary; or

(ii) the benefit is terminated under subsection (5),—

whichever occurs first.

[17] Section 70 of Act provides for benefits, pensions and periodical allowances received from overseas to be deducted from entitlement to New Zealand benefits in certain circumstances. The essential elements of s 70 are that where:

- a benefit or pension or periodical allowance granted overseas, which forms part of a programme providing benefits, pensions or periodical allowance, is paid to the recipient of a benefit in New Zealand or that person's spouse, partner or dependent; and
- the programme provides for any of the contingencies for which benefits, pensions or periodical allowances may be paid under the Social Security Act 1964 or the New Zealand Superannuation and Retirement Income Act 2001 or the Veteran's Support Act 2014; and
- the programme is administered by or on behalf of the government of the country from which the benefit, pension or periodical allowance is received;

that payment must be deducted from the amount of any benefit payable under the Social Security Act 1964 or the New Zealand Superannuation and Retirement Income Act 2001 or the Veteran's Support Act 2014.

[18] The provisions of s 70(1) are very wide. It is not necessary, for example, for the overseas pension or benefit paid to be identical to one of the benefits paid in New Zealand. The comparison is not between individual types of pension but between programmes for income support payable for any of the contingencies covered in the New Zealand income support legislation.¹

[19] The New Zealand Government has determined that migrants and New Zealanders who have worked overseas and who are entitled to payments from the government schemes of the overseas countries they have worked in should not receive the full amount of New Zealand Superannuation because they are able to rely on their overseas pensions to support themselves, either partly or fully, and should not be advantaged over New Zealanders who have spent all of their working lives in New Zealand.

¹ See *Hogan v Chief Executive of the Department of Work and Income* (HC Wellington AP49/02, 26 August 2002); *Tetley-Jones v Chief Executive of the Department of Work and Income* (HC Auckland CIV-2004-485-1005, 3 December 2004).

Decision

[20] The appellant did not want to apply to the CPF for any benefit, pension or other allowance and does not consider that his CPF pension should be deducted from his entitlement to New Zealand Superannuation because he considers the payments paid or received from the CPF are not a pension or benefit or periodical allowance. For that reason, in the first instance, it is convenient to consider the issue of whether or not payments made by the CPF meet the criteria for deduction from entitlement to benefits in New Zealand, including Job Seeker Support and New Zealand Superannuation, pursuant to the provisions of s 70.

[21] The appellant's position is that:

- (i) Payments made to the CPF are the result of employer and employee contributions. The CPF scheme is more akin to a savings scheme than a pension scheme. The money that has been paid into the scheme by the appellant and his employer belongs to the appellant. Payment stops when the funds are depleted. The funds should be regarded as something akin to Kiwisaver.
- (ii) Non-Singapore citizens are required to contribute to the CPF scheme while they are living in Singapore but when they leave they can obtain a refund of all of their contributions. Such a person would not then have CPF pension payments taken into account in assessing their entitlement to New Zealand Superannuation.

Singapore Government programme for income support

[22] It is a common mistake for appellants to this Authority wishing to establish that payments from the income support schemes from a particular country should not be deducted, pursuant to the provisions of s 70, to rely on the fact that the payments they receive are paid under different conditions or funded differently, or offer different benefits from the various forms of income support paid in New Zealand. It is a mistake because the legislative provision enacted by Parliament in s 70 does not require a direct comparison between particular benefits or pensions, including payments made for the circumstance of old age or retirement. The test in s 70 is whether or not the government of the overseas country has a programme which provides benefits, pensions and periodical allowances for *any* of the contingencies provided in the New Zealand Government programme for income support contained in the Social Security Act 1964, the New Zealand Superannuation and Retirement Income Act 2001, and the Veterans Support Act 2014.

[23] The New Zealand programme for income support provides for the contingencies of old age/retirement (New Zealand Superannuation), unemployment (Jobseeker Support), temporary sickness, long-term invalidity (Supported Living Payment), survivors (Orphans Benefit and Supported Living Payment), disability (Disability Allowance) and certain other circumstances.

[24] The inquiry in this case is, does the Singapore Government have a programme designed to provide income support for its citizens and permanent residents for any of these contingencies? It is not necessary that the Singapore programme provide for all of the circumstances provided for in the New Zealand income support programme. Provision for only one of the contingencies will suffice. Nor is it necessary to compare funding mechanisms or entitlements.

[25] In Singapore, the Government has established a fund called the Central Provident Fund. The governing statute is called the Central Provident Fund Act. It appears that the origins of this fund began prior to independence in 1953. It is a compulsory scheme to which employees and their employers and certain self employed persons are required by law to contribute.

[26] It is apparent from perusal of the CPF legislation that the scheme contained in the Act makes provision for old age/retirement, disability and survivors. These are contingencies that are provided for in the New Zealand programme for income support.

[27] The scheme also contains provisions relating to medical care, the purchase of a home and other immovable property, and education. The compulsory contributions required to be made to the fund are initially paid into three separate funds; namely the ordinary account, the special account and the Medicare account. At age 55 a retirement account is established and contributors are required to pay a certain amount into this account. The special account and the retirement account in particular, provide for the contingency of retirement/old age.

[28] The legislation and associated regulations provide for members to withdraw or borrow funds in certain circumstances, and on death an amount may pass to a nominated person. The way in which the scheme provides for the contingencies of old age and disability has distinct differences from the New Zealand scheme, but as previously outlined we are not required to enquire into those differences.

[29] The essential element is that the programme that the Government of Singapore has put in place for the support of its citizens provides for one or more of the contingencies provided in the New Zealand income support programme.

[30] That the scheme is part of the Singapore Government programme for income support is amply demonstrated by extracts from the CPF website² contained in the Section 12K Report, which state that:

The CPF is a mandatory social security saving scheme funded by contributions from employers and employees.

The CPF is a key part of Singapore's social security system and serves to meet our retirement, housing and healthcare needs.

[31] The appellant submits that the scheme in Singapore is more akin to Kiwisaver and should be characterised as a saving scheme. In making his submission, the appellant overlooks the fact that Kiwisaver is a voluntary scheme unlike the CPF scheme which is compulsory. Not only are the contributions to the CPF compulsory, made as a result of legislation enacted by the Singapore Government, but the way in which the funds can be accessed or paid out is also controlled by the Singapore Government. A true private savings scheme would not have these restrictions.

[32] The appellant says the payment he receives is not a benefit or a pension. Section 70 refers to benefits, pensions and periodical allowances. The payment at issue in this appeal is a payment he is entitled to receive monthly. It is a periodical payment. The New Zealand Oxford Dictionary defines "allowance" as:

1. an amount or sum allowed to a person, esp. regularly for a stated purpose.

[33] The amount received by the appellant is paid periodically and is payable on the appellant attaining a particular age. It is intended by the Singapore Government primarily to replace income on retirement or old age. We are in no doubt the payment the appellant receives constitutes a periodical allowance.

[34] In addition, the New Zealand Oxford Dictionary defines "pension" as:

1. a regular payment made by a government to people above a specified age, to widows or to the disabled.

The payments made to the appellant also readily fall within a commonly understood meaning of "pension".

Administered by or on behalf of the Government

[35] The second test which must be satisfied before a payment of overseas pension is caught by the provisions of s 70 is that the benefit, pension or periodical allowance

² <http://www.cpf.gov.sg>.

received must be part of a programme administered by or on behalf of the government of the country from which the benefit, pension or periodical allowance is received.

[36] The CPF has been created by statute enacted by the Government of Singapore. The fund is administered by a Board constituted under s 3 of the CPF Act. The power of appointment to the Board lies with the Minister in concurrence with the President under Article 22A(1B) of the Constitution. The Board must prepare a budget each year for approval by the President under Article 22B of the Constitution.

[37] The second schedule of the CPF Act provides that the accounts of the Board shall be audited at least once a year by the Auditor General, or such other auditor as may be appointed annually by the Minister in consultation with the Auditor General. The Minister causes an audited copy of the financial statements to be published in the Gazette and presented to Parliament.

[38] The appellant has not disputed that the administration of the CPF resides within the Ministry of Manpower, which is a department of the Government of Singapore.

[39] We are in no doubt that the CPF is part of a programme administered by or on behalf of the Government of Singapore.

[40] We are satisfied that the payments the appellant receives from the Singapore Central Provident Fund meet the criteria of s 70 of the Social Security Act 1964 and must be deducted from the appellant's entitlement to benefits in New Zealand, including Job Seeker Support and New Zealand Superannuation.

Suspension of payments

[41] We now turn to the issue of whether the Chief Executive was correct to suspend payment of New Zealand Superannuation to the appellant when he failed to take reasonable steps to test eligibility for a pension from the CPF. It is possible that the appellant was already receiving payments from the fund when he first started receiving a benefit in December 2013. He has not provided reliable information about when the CPF payments he received, commenced.

[42] As outlined above, the provisions of s 70 apply to payments from the CPF. The appellant was given ample opportunity to either make an application for a CPF payment or to provide evidence of the payments he was receiving. He resisted all efforts to provide the necessary information. For example:

- On 25 November 2014, the appellant claimed that CPF was not a pension fund and only civil servants and the like received pensions.
- In various communications from November 2014 onwards, the appellant asserted that it was not a social security-based pension fund but a Kiwisaver fund.

[43] On 30 June 2015, the Ministry wrote to the appellant again requesting that he provide verification of his entitlement, to a payment from the CPF or evidence of writing to the CPF to apply for any entitlement and provide such evidence to the Ministry by 21 July 2015. The appellant did not provide a copy of any communication from himself to the CPF or verification of entitlement by 21 July 2015.

[44] On 6 August 2015, the Ministry wrote to the appellant and outlined the dates of nine communications sent to the appellant requesting he write to the CPF to test his eligibility for a pension and noting that the appellant had been requested to provide a copy of a letter sent to the CPF. The letter of 6 August records that the Ministry had not received a copy of any letter sent by the appellant to the CPF. As a result, the appellant was informed his New Zealand Superannuation payments would stop from 26 August 2015.

[45] We are satisfied that the appellant was given ample opportunity to take reasonable steps to test his entitlement to a payment from the CPF. At the time the notice was sent on 6 August 2015, the Chief Executive was entitled to conclude the appellant had not taken reasonable steps to pursue an application or to provide evidence that he had made an application. It was therefore appropriate for the Chief Executive to give notice that the appellant's New Zealand Superannuation would be suspended from 26 August 2015 if the information sought was not received prior to that date.

[46] On 11 August 2015, the appellant provided a letter dated 20 July 2015 from the Central Provident Fund Board. This letter made it clear that the appellant held a fund with the Board but that he was not receiving a pension from the Board. The inference to be drawn from this letter is that the appellant had not taken steps to make an application to the Board for a pension or other periodical payment or allowance. The Ministry's request had not been satisfied by 26 August 2015. It was therefore appropriate for the Chief Executive to suspend the appellant's benefit entitlements in New Zealand from that date.

[47] The appellant is particularly aggrieved that the rules governing the CPF permit the withdrawal of funds held in a lump sum in certain circumstances, particularly if the

person is not a citizen and leaves Singapore or the person renounces their Singapore citizenship. Whereas, a person who has elected to take a periodic payment or is a citizen obliged to take a periodic payment, will have their periodic payment deducted from their entitlement to New Zealand Superannuation. The appellant contends that it is unfair that a person who has withdrawn their funds, with the result that they are not entitled to a pension from the CPF, can retain their funds and not be subject to the s 70 deduction regime.

[48] The appellant's annoyance is understandable. The answer, however, is not to exempt all payments from the CPF from the s 70 deduction regime. Rather, the Chief Executive may need to consider whether or not the provisions of s 74(1)(d) of the Social Security Act 1964 (relating to the deprivation of income or assets) may apply in such circumstances or, if s 74(1)(d) cannot be applied, whether an equivalent provision is required to promote the fair application of s 70.

[49] The appeal is dismissed.

DATED at WELLINGTON this 16th day of June 2016

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member