[2018] NZSSAA 14

Reference No. SSA 120/16

IN THE MATTER of the Social Security Act 1964

AND

IN THE MATTER of an appeal by **XXXX** of XXXX against a decision of a Benefits Review Committee

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

Ms S Pezaro Deputy Chair

Mr K Williams Member

Hearing at **Auckland** on 17 May 2017

Appearances

The appellant in person

For the Chief Executive of the Ministry of Social Development: Ms J Burns

DECISION

[1] XXXX (further referred to as "the appellant") appeals the decision of the Chief Executive, upheld by a Benefit Review Committee, to assess his rate of New Zealand Superannuation (NZS) at the married rate from 24 February 2016, on the basis that he and XXXX ("alleged partner"), have been in a relationship since 2013.

[2] The appellant was granted NZS on 7 December 2003 and paid at the single sharing rate. On 12 June 2015 he enquired about including his partner as a non-qualified spouse (NQS) on his NZS. The appellant and his alleged partner attended an appointment with Mr A, a case manager. The alleged partner completed a personal details form and a NZS Application Form – Spouse/Partner. She and the appellant signed this form. As a result of the information they provided the appellant's NZS was reassessed at the half-married rate and the alleged partner was included as NQS from 15 July 2015.

[3] On 7 October 2015 the appellant met Mr A to discuss the decision and applied for it to be reviewed. After this discussion, and consideration of a property sharing agreement that the appellant had showed him, Mr A concluded that he and his alleged partner were not in a relationship. He then reversed the decision to apply the half-married rate to the appellant's

NZS and cancelled the alleged partner's application for NQS. The debt that was established when they were assessed to be in a relationship was then reversed.

[4] On 14 December 2015 Mr A met with the alleged partner to discuss her relationship with the appellant. In evidence Mr A said that she initiated this meeting. She completed a personal details form and stated that she and the appellant had been in an intimate relationship at all the houses where they lived together and that in their present home they share a room with separate beds and have an intimate relationship.

[5] The alleged partner also said that she and the appellant had travelled overseas and in New Zealand together many times, they share their expenses and have done so since 2005, and she supported him when he had been in financial difficulty in the past. She stated on the form:

> I love him to bits truly and have done since 2005. We have had an exchange of rings in our own personal way. I will never leave him and if he gets sick I will not put him in a rest home.

[6] Mr A interviewed the appellant on 23 December 2015. He denied that he was in a relationship and said that they bought their current property as a financial investment to help the alleged partner. He stated:

> We are not in a relationship, do not have intimacy, make separate decisions, separate bank accounts. We do attend functions together.

[7] In February 2016 the appellant's NZS was reassessed at the half-married rate. The alleged partner was not included as an NQS because by that time her income had increased which made it no longer to their joint advantage for her to be included.

[8] On 15 July 2016 the alleged partner applied for a non-beneficiary accommodation supplement. She told Mr A that she did not have enough money to pay her mortgage and that the appellant did not want to include her in his NZS.

The issue

[9] The issue that we need to determine is whether the appellant was in a relationship in the nature of marriage as at 24 February 2016.

The legislation

[10] The question of what constitutes a relationship in the nature of marriage for the purpose of determining the appropriate rate of NZS is governed by s 63 of the Social Security Act 1964 (the Act). In this case s 63(b) is the relevant provision:

63 Conjugal status for benefit purposes

For the purposes of determining any application for any benefit, or of reviewing any benefit already granted… the chief executive may in the chief executive's discretion—

(a) regard as single any applicant or beneficiary who is married or in a civil union but is living apart from his or her spouse or partner:

(b) regard as married any 2 people who, not being legally married or in a civil union, have entered into a relationship in the nature of marriage—

and may determine a date on which they shall be regarded as having commenced to live apart or a date on which they shall be regarded as having entered into such a relationship, as the case may be, and may then in the chief executive's discretion grant a benefit, refuse to grant a benefit, or terminate, reduce, or increase any benefit already granted, from that date accordingly.

What is required to establish a relationship in the nature of marriage

[11] The Court of Appeal's decision in *Ruka v Department of Social Welfare*[1] is the leading authority on what the phrase "a relationship in the nature of marriage" means in section 63 of the Act.

[12] The Court considered that the analysis requires a comparison with a legal marriage. Richardson P, and Blanchard J observed:[2]

> The comparison must seek to identify whether there exist in the relationship of two unmarried persons those key positive features which are to be found in most legal marriages which have not broken down (cohabitation and a degree of companionship demonstrating an emotional commitment). Where these are found together with financial interdependence there will be such a merging of lives as equates for the purposes of the legislation to a legal marriage.

[13] Thomas J noted at p 181:

> It is this underlying commitment to the relationship which distinguishes marriage from the relationship of couples who may nevertheless share premises and living expenses. A relationship will not be a relationship in the nature of marriage for the purposes of s 63(b), therefore, unless it exhibits this mutual commitment and assumption of responsibility. In the context of the Social Security Act, this will necessarily include financial support or interdependence or, at least, a mutual understanding about the parties' financial arrangements of the kind I have suggested.

---

1 *Ruka v Department of Social Welfare* [1997] 1 NZLR 154 (CA).

2 *Ruka v Department of Social Welfare* [1997] 1 NZLR 154 (CA) at 162 (see also Thomas J at 182 regarding the merging of lives).

[14] The Court took the view that in the context of the Act financial interdependence was a central consideration.[3] The reasoning of the majority was that:[4]

> … an essential element is that there is an acceptance by one partner that (to take the stereotypical role) he will support the other partner and any child or children of the relationship if she has no income of her own or to the extent that it is or becomes inadequate. The commitment must go beyond mere sharing of living expenses, as platonic flatmates or siblings living together may do; it must amount to a willingness to support, if the need exists. There must be at least that degree of financial engagement or understanding between the couple.

[15] The central feature of a relationship in the nature of marriage is therefore commitment to financial responsibility, including commitment to provide support in future adverse circumstances. The Court found that the Courts below had applied the wrong test by failing to look primarily at the financial aspects of the relationship.[5]

[16] However financial commitment alone is not sufficient to find there is a relationship in the nature of marriage. The Court also found that emotional commitment was essential:[6]

> Where financial support is available nevertheless there will not be a relationship in the nature of marriage for this purpose unless that support is accompanied by sufficient features evidencing a continuing emotional commitment not arising just from a blood relationship. Of these, the sharing of the same roof and of a sexual relationship (especially if it produces offspring) are likely to be the most significant indicators. But, since the amendment to s 63 in 1978, the sharing of a household is not essential. And, particularly in the case of older couples, the absence of sexual activity will not in itself deprive the relationship of the character of a marriage.
>
> The statutory context is of great importance in determining what is a "relationship in the nature of marriage". Other statutes use the same expression but for different legislative purposes. What is or is not such a relationship may be viewed differently for different purposes.

[17] Ultimately the Court emphasised the merging of lives, as noted at [14] above. The Court noted that strategies to withdraw support to obtain a benefit would not be effective.

[18] The Court of Appeal considered earlier authorities such as *Thompson v Department of Social Welfare*[7] which placed some emphasis on a "checklist". While acknowledging the checklist

---

3 See *Ruka* at 156, where Richardson P and Blanchard J discuss the central importance of this aspect.
4 *Ruka* at 161.
5 *Ruka* at 163.
6 *Ruka* at 161-162.
7 *Thompson v Department of Social Welfare* [1994] 2 NZLR 369 (HC).

approach may give some assistance in deciding some cases, the Court considered a better approach was the more comprehensive consideration set out above.

[19] *Ruka* was discussed by the Court of Appeal in *Cameron v R* [2015][8]. In *Cameron* the Court referred to s 63 of the Act as reflecting the legal obligation between legally married people to support each other financially when the need arises. The Court considered that s 63 extends that obligation to relationships in the nature of marriage and any entitlement to a benefit under the Act therefore considers the financial position of the couple rather the individual.

The case for the appellant

[20] The appellant submits that he is single and that his alleged partner is a friend, and that they share the house they own and enjoy each other's company, but are not in a relationship. He said their friendship grew when he and his alleged partner worked together. She invited him to stay with her when he did not have his own home. At that time her husband was living there. After some months the appellant found a flat but continued to visit her and her family.

[21] The appellant provided a number of documents which focus on his beliefs about relationships and marriage and what he sees as the distinction between his situation and the way in which the Ministry applies the law.

[22] The appellant states that he is a Christian and that after his first wife died he married a widowed Christian. After a year of marriage his second wife asked for a separation and, although there was some attempt at reconciliation, it was not successful. In his written statement the appellant said that he remains married and that if his second wife requested a reconciliation he would agree.

[23] The appellant also says that it would be scandalous for him to be regarded as living in a de facto relationship and that he would not sin by entering into another marriage or de facto relationship, committing adultery or having a sexual relationship. He also says that his alleged partner adheres strictly to her Hindu faith which prohibits any 'false intimate union'.

[24] However at the hearing the appellant stated that he divorced his first wife in 2005 and that his alleged partner is also now divorced. He said that from mid 2002 to the end of 2003 he and his alleged partner behaved 'as if they were courting'. Before 2003 they had casual sex but since then they have not had an intimate relationship and have been living as friends. From the end of 2003, when he qualified for NZS, he entertained the thought of marriage to her, but knew that his marriage would have to be annulled by the Catholic church.

---

8 *Cameron v R* [2015] NZCA 363.

[25] The appellant addressed the meaning of the rings, which his alleged partner said they exchanged, in his document titled 'Fellowship of the Rings'. He stated that he removed the wedding ring from his second wife when she left him and that his alleged partner gave him a gold band in 2001. She explained this as 'to keep women away'. The appellant said he bought her a ring in 2005 after she had her rings stolen. He said their rings were not simultaneously exchanged and there was no suggestion that they were significant in their friendship. He stated that it was only recently that his alleged partner had started to use the term "partners".

[26] The appellant said that his alleged partner had credit card debt and that the bank offered her a personal loan to cover it. When he saw the terms of that loan, he paid off her debt and they agreed that she would reimburse him. The appellant said he agreed to live with his alleged partner to assist her financially and assist her into housing. In 2013 they bought their current house together. The appellant said that they divide the bills up between three of them, including his alleged partner's son, and that they share rates equally.

[27] They signed a property sharing agreement which records that the appellant contributed two thirds of the purchase price in cash and his alleged partner contributed one third by way of a mortgage. The agreement also records that:

> The parties have been sharing accommodation since 2008. They are not in a de facto relationship with each other and do not intend to enter into a de facto relationship.
>
> The parties have agreed to acquire a property situated at [XXX] in which they intend to reside.

[28] Between these two paragraphs are the following hand written words: 'And the parties have been close in support of each other since 2001, as friends'. This statement is initialled by the appellant but not by his alleged partner, nor is it witnessed. The document is otherwise witnessed and was prepared by a solicitor.

[29] The appellant said that in 2014 his alleged partner's income reduced. When they went to WINZ and met Mr A they discussed including her as non-qualified spouse on his NZS. In oral evidence the appellant stated that Mr A explained his NZS would be reduced to the married rate. The appellant said that in his mind this was a temporary arrangement and he was staggered by the amount that his NZS payment reduced by when she was included as a NQS and the 'big boost' that she got. He said that he thought it was a mistake.

[30] The appellant said he 'let it ride for a while' and then objected to the reduction. He met Mr A again and told him that he did not see their friendship as a partnership. He showed Mr A the

property sharing agreement and the Ministry reversed its decision and determined that he and his alleged partner were not in a relationship in the nature of marriage.

[31] However subsequently the alleged partner completed a personal details form stating that they had been in an intimate relationship at all the houses where they lived together and, in the present home, they share a room with separate beds. After further interviews with the appellant and his alleged partner the Ministry determined that they were in a relationship in the nature of marriage.

[32] At the hearing Ms Burns asked the appellant whether the benefit was lower than expected when he went on to the married rate. He responded that when he found out the amount he could not live with it. He agreed that the money did trigger his desire to look at the situation again.

[33] The appellant did not call his alleged partner to give evidence at the hearing and although the Ministry summoned her she did not attend the hearing. However the Ministry produced a handwritten statement dated 8 May 2017 which is signed by the alleged partner but not witnessed. In determining this appeal we considered this statement, and the forms that the appellant and his alleged partner completed which the Ministry produced in its s 12K report, and are referred to by Mr A in his brief. Although these documents do not have the weight of oral evidence, as the appellant did not challenge their authenticity, we accept them as accurately recording their statements made at that time.

The case for the Chief Executive

[34] The Ministry did not serve the appellant with a copy of Mr A's brief before the hearing. At the hearing we gave him time to consider this brief and the option of an adjournment to consider this evidence. He declined the adjournment and agreed to proceed with the hearing.

[35] The Ministry submits that the appellant and his alleged partner are financially interdependent and emotionally committed, such that they are in a relationship in the nature of marriage. The Ministry contends that financial interdependence is demonstrated by the fact that they have lived together since 2006, have owned a house together since 2013, understand each other's financial circumstances, and have supported each other financially. The Ministry referred to the alleged partner's bank statements which show that her children pay rent to her but not to the appellant. It is submitted that it would be usual for joint home owners who were not in a relationship to benefit equally from any rent payment. In addition the appellant states that he supports his alleged partner's disabled son. While they maintain a certain amount of privacy in relation to their financial affairs the Ministry submits that this is not unusual for older couples commencing a new relationship.

[36] Ms Burns submits that the appellant and his alleged partner are committed to merging their lives, such that the criteria in *Ruka* are met. The Ministry submits that they provide emotional support for each other and argues that this support is evident in his application to have her included in his NZS and the personal details that she supplied on her application form. The Ministry also refers to the appellant's email of 1 July 2015, where he responds to the indicators in the Ministry's brochure on relationships and income assistance. It is suggested that these responses are indicative of a relationship. Even if they do not have a sexual relationship the Ministry submits that this is not the only factor to be taken into account in determining whether or not a relationship is one in the nature of marriage.

The evidence of Mr A

[37] Mr A is a case manager employed by the Ministry. From 2012 to March 2017 he worked with NZS clients. He said that when he first interviewed the appellant and his alleged partner in relation to including her as a NQS they both stated that they were in a relationship. Mr A had no recollection of the assessment being 'subject to figures' as the appellant had suggested.

[38] Mr A said that on 23 December 2015, when he interviewed the appellant, after his alleged partner had provided information confirming their relationship, he confirmed most of the details provided by her, including that they had given each other rings and shared a bedroom. However he denied that they were in a relationship and said that they purchased the property together to assist her to gain a home.

[39] The appellant did not challenge Mr A's evidence. He asked Mr A whether he had sent him the notes made of his interview with his alleged partner and how she had described the exchange of rings. Mr A said that his notes were incorporated into his report and that the alleged partner described a gathering of friends and family in relation to the rings. Mr Amaney said he could not recall what the appellant had told him about the rings, but believed he had asked him about them.

Discussion

[40] This appeal is characterised by contradictory evidence. Not only does the evidence of the appellant contradict the written information that his alleged partner provided to the Ministry, he also provided inconsistent information to the Ministry and his oral evidence contradicted his written submissions.

[41] However at the time that the appellant and his alleged partner first applied for her to be included as a NQS the information they provided to the Ministry was congruent. The information that she provided subsequently to the Ministry remained consistent with her first statement; it is only the appellant's position that has altered.

[42] We considered the implication of the property agreement which states that the parties are not in a de facto relationship and do not intend to enter into one. This agreement was made some two years before the application to include the alleged partner as a NQS. While it expresses the parties' intentions at that time it is not binding on them. Nor can it limit the Authority's inquiry into the nature of their relationship for the purposes of s 63 of the Act.

[43] We are satisfied that the appellant considered that he and his alleged partner were in a relationship when he applied to have her included on his NZS as a NQS. His position changed only after he realised the difference that this would make to his entitlement. His response to Ms Burns that the reduction triggered his desire to 'look at the situation again' supports this conclusion.

[44] At the hearing we put the proposition to the appellant that we must conclude that either he was dishonest when he stated on his application for his alleged partner to be included in his NZS that she was his partner, or he was dishonest when he later denied that this was the case. He said that the application for NZS was a mistake however we do not accept that this is a plausible explanation. He presented as an intelligent, articulate person who can manage his finances. The evidence suggests that the decision to include her as a NQS was a joint one, made on the basis of their relationship and their financial situation.

[45] We also questioned the appellant about the contradiction between his written statement that he was morally prohibited from entering into a relationship and his oral evidence that he had a sexual relationship with his alleged partner. He said that the sexual relationship was wrong. However our concern is not with the morality of his actions but with the weight we can reasonably give to his evidence. The fact that the appellant filed written statements which he admitted in evidence were not correct and that he changed his position about the nature of his relationship in his dealings with the Ministry leads us to find his evidence unreliable. Accordingly we give more weight to the joint and consistent application for the alleged partner to be included in the appellant's NZS than his subsequent, inconsistent evidence that they were not in a relationship at the time.

[46] The appellant's submissions focus on his personal values and criteria for determining what constitutes a relationship however we are required to make an objective assessment of his situation. We have no doubt that in February 2016 he and his alleged partner were financially interdependent. In addition to owning a home together they provided financial support to each other in times of need. He paid off her credit card debt and they structured their finances in a manner that indicated full knowledge and accommodation of the other's financial situation. They have a long history of living together, socialising together, wearing rings given by the other partner, sharing a bedroom, socialising with each other's family and friends, and have been sexually intimate. Most importantly, they voluntarily described themselves as partners

and confirmed that this information was correct. All these factors demonstrate the degree of merging of lives that is a feature of a relationship in the nature of marriage.

[47] For these reasons, we find that at 26 February 2016 the appellant was in a relationship in the nature of marriage.

Order

[48] The appeal is dismissed.

Dated at **Wellington** this 14th day of March 2018

S Pezaro
Deputy Chair

K Williams
Member