[2015] NZSSAA 012

Reference No. SSA 096/14

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 M Wallace - Chairperson
Mr K Williams - Member

HEARING at WELLINGTON on 11 February 2015

APPEARANCES

The appellant in person
Mr R Dennett 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 to deduct the amount of an overseas pension received by the appellant's wife from his entitlement to a single sharing rate of New Zealand Superannuation.

Background

[2] The appellant is aged 74 years. On 30 March 2013 he remarried, having previously been widowed. The appellant's wife (**XXXX**) is a citizen of the United Kingdom. She does not have residence in New Zealand at the present time.

[3] At the time of his marriage the appellant was receiving New Zealand Superannuation paid at the living alone rate. As a result of the Ministry becoming aware of his marriage, his payments were initially changed to the half married rate. When the Ministry clarified the appellant's wife's immigration status his payments were further altered to the single rate. The appellant's New Zealand Superannuation entitlement is subject to a deduction in respect of a pension he receives from the United Kingdom.

[4] The Ministry also became aware that **XXXX** was receiving a pension from the United Kingdom. A decision was made that not only should the appellant's United Kingdom pension be deducted from his entitlement to the single rate of New Zealand Superannuation, but his wife's United Kingdom pension should also be deducted from his entitlement. The result of this additional deduction is that no payment of New Zealand Superannuation is now due to the appellant. The appellant says that this has caused him a serious difficulty. **XXXX** has a home and family in the United Kingdom and the appellant has a home and family in New Zealand. The agreement they have

between them is that they will spend six months of each year in each other's country. This enables them to maintain contact with their respective families. In addition, each is responsible for the outgoings on their own properties. The appellant says that the loss of his New Zealand Superannuation has significant financial consequences for him and has resulted in him having to return to work. The appellant says that he has worked and paid taxes in New Zealand for many years and it is unfair that his entitlement to New Zealand Superannuation should be treated in this way.

[5] The appellant sought a review of decision. The decision was reviewed internally and by a Benefits Review Committee. The Benefits Review Committee upheld the decision of the Chief Executive. The appellant then appealed to this Authority.

Decision

[6] Section 70 of the Social Security Act 1964 provides for benefits received from overseas to be deducted from entitlement to New Zealand benefits in certain circumstances. The essential elements of s 70 of the Act are that where:

- a benefit or pension or periodical allowance granted overseas which forms part of a programme providing benefits, pensions or periodical allowances, is paid to the recipient of a benefit in New Zealand or that person's spouse, partner or dependents; 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 War Pensions Act 1954; 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 and other legislation governing social security benefits.

[7] The provisions of s 70(1) are very wide. It is not necessary, for example, for the pension or benefit paid by the United Kingdom government to be identical to one of the benefits paid in New Zealand. The comparison is not between individual types of pension but between schemes of social assistance.

[8] The Authority has held on many occasions that the United Kingdom retirement pension which the appellant's wife receives is part of a programme comparable to the programme for social security in New Zealand. The programme is administered by or on behalf of the Government of the United Kingdom. As a result, the provisions of s 70 of the Act apply and benefits received in New Zealand (including New Zealand Superannuation) must be reduced by the amount of the pension or their spouse's pension entitlement from the United Kingdom.

[9] In this case, the appellant himself is entitled to a small pension from the United Kingdom and both prior to his marriage and currently his entitlement to New Zealand Superannuation is reduced by the amount of his United Kingdom pension. The appellant does not object to this. Rather, he objects to the fact that his wife's pension is being deducted from his entitlement to a single rate of New Zealand Superannuation.

[10] Section 70 provides that any overseas pension received by the spouse of someone receiving a benefit in New Zealand must also be deducted from the benefit entitlement.

[11] Also relevant in this case is s 74A of the Act which particularly impacts on the appellant. This section provides that a person is not entitled to receive a benefit in New Zealand if they hold only a temporary entry class visa to be in New Zealand. Section 74A(2) provides that while **XXXX** holds only a temporary entry class visa the appellant can only be paid a single rate of benefit. This is significant because the total of the United Kingdom pensions received by the appellant and his wife is less than the married rate of New Zealand Superannuation. If **XXXX** held a residence permit to be in New Zealand the appellant and his wife may be eligible to be paid New Zealand Superannuation at the married rate and it is likely that they would at least receive a partial payment.

[12] The New Zealand Superannuation and Retirement Income Act 2001 is a scheme designed to provide basic income on retirement for all residents over the age of 65 years who meet the residence criteria. The residence criteria are relatively modest. The scheme is funded from current taxation and the benefit paid regardless of other income or contributions to the taxation base. It is a scheme significantly different from the contributory scheme of the United Kingdom. One of the purposes of s 70 is to ensure that someone who has not spent all their working life in New Zealand and is entitled to payment from a scheme run by an overseas country should not be advantaged over a person who has spent all of their life, including their working life, in New Zealand.

[13] If the appellant and his wife were entitled to receive the married rate of New Zealand Superannuation while they were in New Zealand we would have no difficulty in accepting that the objects of the legislation were met by the deduction of both overseas pensions from their entitlement to New Zealand Superannuation. This situation is a little different, however, because the appellant receives only the single rate of New Zealand Superannuation. It is less obvious in these circumstances to see how the appellant and his wife are advantaged over other New Zealanders, possibly with the exception of other married couples who are subject to s 74A. Section 74A ensures that persons unlawfully in New Zealand or on temporary permits to be in New Zealand do not receive social security benefits. In part it assists in encouraging new arrivals to support themselves. Typically a non-resident partner will hold a temporary work permit to enable them to obtain work and support themselves. **XXXX** is aged 76 years. Her prospects of obtaining work in New Zealand are limited. She has a pension with which she can support herself but it is clear that her pension combined with **XXXX** United Kingdom pension is less than New Zealand Superannuation and therefore unlikely to be sufficient to support them both. The appellant and his wife appear to be disadvantaged compared to other married couples receiving New Zealand Superannuation.

[14] The Authority has previously noted that there are some issues around the deductibility of the overseas pension of a spouse from a person's entitlement to New Zealand Superannuation which leave an impression of unfairness and which cause resentment.[1] This factual scenario is another example.

[1] [2014] NZSSAA 2, SSA 098/13.

[15] We have some difficulty in accepting that Parliament would have intended that the combined overseas benefits of a married couple should be deducted against a single rate of benefit in New Zealand. Perhaps when s 74A was enacted the possible consequences of the application of s 70 were overlooked.

[16] Arguably, although the text of s 70(1)(a) is relatively clear (that is that the overseas pension of a person's spouse or partner must be deducted from a person's benefit entitlement including New Zealand Superannuation); taking a purposive approach to the interpretation − one which would achieve the objective of the legislation − the overseas pension of a person's spouse or partner should be deducted only where the person qualified to receive the benefit in New Zealand receives the married rate of benefit.

[17] Section 70(1)(2) of the Act gives the Chief Executive a discretion to determine the date that deduction of any overseas pension is to take effect. This date may be a date before, on, or after the date of determination to deduct the pension. The Chief Executive has already used discretion to delay deduction of **XXXX** United Kingdom pension to 13 November 2013.

[18] In exercising this discretion, we consider that the Chief Executive has failed to give proper consideration to **XXXX** inability to obtain a residence visa until she has been in a genuine and stable relationship with the appellant for two years and the fact that as a result the appellant receives only a single rate of pension. The ages of the appellant and his wife and therefore their ability to work and support themselves is also relevant. We direct that the Chief Executive defer deduction of **XXXX** pension from the appellant's entitlement to New Zealand superannuation until 13 April 2016. This should give **XXXX** sufficient time to obtain residence in New Zealand on the basis of her marriage to the appellant. It should also give the appellant and his wife time to further investigate whether their desire to live six months of each year in each country is in fact feasible in terms of the pension arrangements in New Zealand and the United Kingdom.

[19] The appeal is allowed to the extent indicated.

DATED at WELLINGTON this 13th day of March 2015

_____
Ms M Wallace
Chairperson

_____
Mr K Williams
Member