

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 AUCKLAND on 11 May 2015

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 declining his application for New Zealand Superannuation made on 3 June 2014.

[2] The application was declined on the basis that the appellant did not meet the requirement that he be resident and present in New Zealand for five years since attaining the age of 50 years.

[3] The issues in this case are twofold: first, whether the appellant's employment with the Roman Catholic Church in **XXXX** between 2009 and 2014 can be regarded as missionary work; and second whether the appellant is entitled to have the period he was working for the Church included in the calculation of his residence and presence in New Zealand, for the purposes of meeting the eligibility requirements for New Zealand Superannuation.

Background

[4] We understand the appellant emigrated to New Zealand in the 1970s. In 1987, when he was 47 years old, he and his wife sold their home in New Zealand and returned to **XXXX** with their five children. They returned to **XXXX** so that the appellant could care for his elderly father and so that the appellant could assume responsibility for the family land. The appellant's father died in 1990 and the appellant took on his father's Matai responsibilities.

[5] The appellant has expertise in land survey matters, and following his return to **XXXX** he obtained employment in the **XXXX** Lands and Survey Department. The appellant told the Authority that he remained employed by this Government Department for some 13 or 14 years until 2003. At that point, he began working as a real estate agent. He had his own business. In addition to real estate agency work he took on a variety of other work, including work for a law firm and consultancy work related to his expertise in land.

[6] In 2009, the appellant began employment with the Roman Catholic Church in **XXXX**. His role was Director of Lands. This included responsibility for the Church's tenants. His work included the collection of rent, ensuring tenants complied with their tenancy agreements and resolving tenancy disputes. He was also involved in a project relocating tenants away from the Church's land around **XXXX** to enable the land to be leased to commercial tenants for a better rate of return.

[7] Between the time that he left New Zealand to resume residence in **XXXX** and the time of his application for New Zealand Superannuation (a period of approximately 27 years), the appellant returned to New Zealand to visit on five occasions. The longest of these visits was for a month. The appellant calculates the total number of days he spent in New Zealand between 1987 and 2014 to be approximately 97 days.

[8] The appellant returned to New Zealand on 27 May 2014. He made application for New Zealand Superannuation on 3 June 2014. At the time of his application for New Zealand Superannuation his second wife and the three children of that marriage (who are all teenagers) remained living in.

[9] In assessing the appellant's application, the Ministry concluded that the appellant had not been resident and present in New Zealand for five years since attaining the age of 50 years and declined his application.

[10] The appellant sought a review of decision. The matter 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.

[11] Before the Authority, the appellant submitted that his employment with the Roman Catholic Church in **XXXX** should be considered to be missionary work and pursuant to Section 10 of the New Zealand Superannuation and Retirement Income Act 2001, this period of his absence overseas should be treated as residence and presence in New Zealand for the purpose of calculating his entitlement to New Zealand Superannuation.

Decision

[12] Section 8 of the New Zealand Superannuation and Retirement Income Act 2001 (the Act) requires certain residence criteria to be met before a person can be granted New Zealand Superannuation. Those criteria include the requirement that the person has been both resident and present in New Zealand for a period(s) aggregating not less than five years since attaining the age of 50 years. On its face, the appellant does not meet this requirement.

[13] Section 10 of the Act provides as follows:

“10 Periods of absence as missionary also not counted

- (1) In determining the period an applicant has been present in New Zealand, no account is taken of any period of absence while engaged in missionary work outside New Zealand as a member of, or on behalf of, any religious body or, as the case may be, during any period that the applicant was absent from New Zealand with his or her spouse or partner while that spouse or partner was engaged in that missionary work.
- (2) Subsection (1) applies only if the chief executive is satisfied that the applicant was either born in New Zealand or was ordinarily resident in New Zealand immediately before leaving New Zealand to engage in the missionary work or, as the case may be, to accompany or join his or her spouse or partner.
- (4) In this section, **missionary work** includes the advancement of religion or education and the maintenance, care, or relief, of orphans, or the aged, infirm, sick, or needy.”

[14] In summary, a person who has been absent from New Zealand while engaged in missionary work outside New Zealand, as a member of or on behalf of any religious body, can be considered as remaining both resident and present in New Zealand— provided the applicant was either born in New Zealand or was ordinarily resident in New Zealand immediately before leaving New Zealand to engage in missionary work.

[15] In this case, the appellant says that his work with the Roman Catholic Church in **XXXX** should be regarded as missionary work, in the sense that his work supported the mission of the Roman Catholic Church in **XXXX**.

[16] “Missionary work” is defined in Section 10(4) of the Act. Section 10(1) also provides that to be “engaged in missionary work”, the person must be a member of a religious body or their work must be carried out on behalf of a religious body.

[17] The Oxford English Dictionary (online ed) defines “missionary” as:

“a. A person sent on or engaged in a religious mission abroad. Also: a person engaged in evangelical or humanitarian work at home.”

[18] The appellant is apparently one of approximately 200 employees of the Roman Catholic Church in **XXXX**, excluding clergy. We have serious reservations as to whether an employee of a Church whose employment relates specifically to the commercial activity of the Church could ever be regarded as carrying out “missionary work”.

[19] While that work may support the mission of the Church, we consider that the work of a missionary must at the very least include direct involvement in the type of work referred to in the definition in Section 10(4), such as “the advancement of religion or education” or the “maintenance, care, or relief of orphans, or the aged, infirm, sick or needy”. We are not satisfied that the appellant’s employment with the Roman Catholic Church in **XXXX** directly involved him in this type of work. We are not satisfied that his employment can be regarded as missionary work.

[20] In any event, the significant feature of Section 10 is that Subsection 10(2) requires a person who was not born in New Zealand to be ordinarily resident in New Zealand immediately before leaving New Zealand to engage in missionary work. The appellant was not born in New Zealand so he must establish that he was ordinarily resident in New Zealand prior to leaving to take up the missionary work. The subsection requires a close relationship in time between when an individual leaves New Zealand and takes up missionary work. The words “ordinarily resident in New Zealand immediately before leaving to take up missionary work” make this clear. The

legislation does not allow for a person to return to their country of birth, take up missionary work some 20 years later, and then permit this period to be treated as residence and presence in New Zealand for the purposes of meeting the eligibility criteria for New Zealand Superannuation.

[21] The appellant left New Zealand in 1987. He ceased to be ordinarily resident in New Zealand at that point. He was not ordinarily resident in New Zealand at any time between 1987 and the time of his application in 2014. He did not leave New Zealand to engage in missionary work and he was not ordinarily resident in New Zealand immediately before he began employment with the Church in 2009.

[22] In summary:

- (a) We do not consider the appellant's work for the Roman Catholic Church in **XXXX** between 2009 and 2014 to be missionary work.
- (b) The appellant did not leave New Zealand to take up missionary work.
- (c) The appellant was not ordinarily resident in New Zealand immediately prior to taking up employment with the Roman Catholic Church in **XXXX**.

[23] We are not satisfied the period the appellant was employed by the Roman Catholic Church in **XXXX** should be counted towards the period of his residence and presence in New Zealand over the age of 50 years, for the purposes of assessing his entitlement to New Zealand Superannuation.

[24] The Chief Executive was correct to determine that the appellant was not eligible for New Zealand Superannuation at the time of his application.

[25] The appeal is dismissed.

DATED at WELLINGTON this 29th day of May 2015

Ms M Wallace
Chairperson

Mr K Williams
Member