

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 the appellant's entitlement to the half married rate of New Zealand Superannuation.

Background

[2] The appellant was granted New Zealand Superannuation from 5 December 2013 when he attained the age of 65 years. The appellant is married but his wife was not eligible for New Zealand Superannuation at the time of his application and he did not apply to have her included. Accordingly, the appellant was granted New Zealand Superannuation at the half married rate. The appellant is also entitled to a pension from the United Kingdom in his own right. He has opted to use the Special Banking option in respect of his United Kingdom pension.

[3] The appellant's wife, who was aged 63 years at the time the appellant made his application for New Zealand Superannuation, also receives a United Kingdom pension. A decision has been made by the Chief Executive that the amount of the appellant's wife's United Kingdom pension must be deducted from the appellant's entitlement to New Zealand Superannuation. This decision was confirmed in a letter of 17 October 2013. The decision was based on the provisions of s 70 of the Social Security Act 1964 and Clause 15 of the Schedule to the Social Welfare (Reciprocity with the United Kingdom) Order 1990.

[4] The appellant says that the decision to deduct his wife's United Kingdom pension from his New Zealand Superannuation is unjust. He had been aware that his own United Kingdom pension would be deducted from his entitlement to New Zealand Superannuation but he was not aware that his wife's United Kingdom pension would

also be deducted. The appellant says that had he and his wife been receiving a married rate of United Kingdom pension, then to deduct the total amount received by both of them from the New Zealand Superannuation pension scheme would be understandable, but as he is only receiving the half married rate it is unfair. He does not believe that the provisions of s 70 were intended to penalise persons in his position. The deduction has made it difficult for him to plan his life in retirement.

Decision

[5] 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(1) 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.

[6] 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.

[7] The Authority has held on many occasions¹ 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 Social Security Act 1964 apply and benefits received in New Zealand (including New Zealand Superannuation) must be reduced by both the amount of overseas pension received by the New Zealand beneficiary and that person's spouse.

[8] In addition, Clause 15 of the Schedule to the Social Welfare (Reciprocity with the United Kingdom) Order 1990 provides that:

"The amount of any benefit which the claimant is entitled to receive under the legislation of the United Kingdom shall be deducted from the amount of benefit which would otherwise have been payable to him under the legislation of New Zealand. Provided that, in the case of a married claimant, the amount to be deducted shall be the aggregate amount of any benefit which the claimant and the claimant's wife or husband are entitled to receive under the legislation of the United Kingdom, or such

¹ e.g. [2013] NZSSAA 43.

part of that aggregate amount as may be determined by the competent authority of New Zealand."

[9] In short, the reciprocal agreement also provides for the deduction of the aggregate of the amount received by both a claimant and their spouse.

[10] 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. The object is to ensure that all older people in New Zealand receive an income which will ensure that in retirement their basic living costs are met.

[11] The purpose of s 70 is to ensure that an individual or a couple who have not spent all of their working life in New Zealand and are entitled to payment from a scheme run by an overseas government, should not be advantaged over an individual or a couple who has spent all of their life in New Zealand.

[12] Benefits are generally paid according to whether a person is married or single and the rates set accordingly. Nevertheless a person who qualifies for New Zealand Superannuation at age 65 can receive the half married rate (but not the single rate) regardless of the income or his or her spouse, whether that income is received from wages or private pension or other investment.

[13] The appellant rightly concedes that if he and his wife were entitled to receive the married rate of New Zealand Superannuation they would have no difficulty in accepting that the objects of the legislation would be met by the deduction of both overseas pensions. This situation is different, however, because the appellant's wife is younger than him and he receives only the half married rate of New Zealand Superannuation. The full married rate is not payable.

[14] The situation which arises in this case arises where the age criteria for eligibility for the overseas pension is lower than 65 years. It is suggested that the Chief Executive's application of s 70 in situations such as this involves an element of discrimination on the basis of age. In the case of a couple receiving the old age pension from the United Kingdom, which until recently set the age at which women could receive the pension at 60 and men at 65, if the wife was older than her husband she could theoretically receive her United Kingdom pension for five years before attaining the age of 65 years and then apply for New Zealand Superannuation, at which point her United Kingdom pension would be deducted.

[15] In this case because the appellant's wife is younger than him the result of deducting his wife's pension from his half married rate of New Zealand Superannuation is that in effect the couple benefit from the United Kingdom pension for a shorter period. We do not accept that this amounts to unlawful discrimination by the Chief Executive.

[16] There can be no doubt that a couple is advantaged by the receipt by one or both of them, of an overseas pension, as compared to a couple who have spent all of their lives in New Zealand and this is precisely what the provisions of s 70 seek to avoid.

[17] The only discretion that the Chief Executive and this Authority have in relation to this matter is pursuant to s 70(2) of the Act which gives the Chief Executive a discretion

to determine the date that deduction of an overseas pension is to take effect. This date may be a date before or after the date of determination to deduct the pension.

[18] The Authority has noted previously 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 cause resentment. This is one of those situations. It perhaps comes about because couples today are more likely to each have their own income. Moreover New Zealand Superannuation is viewed as a pension entitlement arising from past contributions to the tax base rather than a benefit paid from current taxation. However in most circumstances relating to entitlement to benefits (and New Zealand Superannuation is a benefit), it is the aggregation of the family circumstances that is taken into account.

[19] The Authority understands that the appellant's wife is not included in his benefit because she is still working. Although the appellant claimed he could not plan for his retirement as a result of the deduction he did not suggest that he and his wife were in financial hardship.

[20] The Authority has also previously found that it cannot say that the result of the application in s 70(1) in this situation is something that might not have been anticipated by the legislature when the section was enacted. To exercise the discretion not to deduct simply to circumvent the clearly articulated provisions of the Act² would not be an appropriate exercise of the discretion. We do not consider there are any circumstances which would persuade us that the discretion in s 70(2) should be exercised in this case.

[21] We conclude that the decision of the Chief Executive to deduct the appellant's wife's entitlement to an overseas pension from his half married rate of New Zealand Superannuation was correct.

[22] The appeal is dismissed.

DATED at WELLINGTON this 1st day of July 2015

Ms M Wallace
Chairperson

Mr K Williams
Member

² [2014] NZSAA 002.