

[2015] NZSSAA 069

Reference No. SSA 158/14

IN THE MATTER

of the Social Security Act 1964

AND

IN THE MATTER

of an appeal by **XXXX** of Serbia
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

DECISION ON THE PAPERS

Introduction

[1] The appellant appeals against a decision of the Chief Executive upheld by a Benefits Review Committee to pay the appellant New Zealand Superannuation in Serbia at the portable 'overseas' rate rather than the full domestic rate.

Background

[2] The appellant is aged 68 years. He is married. His wife is aged 31 years. He and his wife have two children aged four years and two years. The family are currently living in Serbia.

[3] The appellant first arrived in New Zealand on XXXX. He subsequently became a New Zealand citizen. His wife is from the XXXX. She does not have permanent immigration status in New Zealand.

[4] The Chief Executive notes that NZ Customs Service records of the appellant's arrivals and departures from New Zealand indicate that since his original arrival in

New Zealand, the appellant has spent 3,676 days in New Zealand and 2,520 days outside New Zealand.

[5] The appellant was first granted New Zealand Superannuation from 21 August 2011.

[6] On 7 October 2013, the appellant applied to be paid New Zealand Superannuation in Serbia. The appellant indicated that he was going to live in Serbia for approximately 18 months and that the purpose of his return to Serbia was to help his wife and children. He indicated that his wife had been hospitalised with post-natal depression and the children placed in an orphanage. His application was granted on 26 February 2014 at the proportional rate of \$94.26 from 9 October 2013.

[7] The proportional rate is based on the number of months the appellant has lived in New Zealand. The Chief Executive calculated that the appellant had lived in New Zealand for 135 months.

[8] The appellant sought a review of the decision to pay him \$94.26 per month. 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.

[9] The appellant says he returned to Serbia urgently to care for his wife and children. He is now under strict instructions from the Social Services Authorities in Serbia to remain with his wife. Her present situation is that she requires regular three-monthly reviews by a psychiatrist. The appellant says that the family's only income is the payment received from the Ministry and this is insufficient to pay for food, power and other expenses for the family. He says that he and his family are in a desperate situation. It seems that the appellant has been unable to bring his wife to New Zealand as she does not have the necessary immigration visa to live in New Zealand.

[10] The appellant submits that either he should be treated as a missionary, in that he is caring for his wife and children abroad, or alternatively, he should be entitled to the exemption afforded to Red Cross workers as he is a volunteer with the Red Cross in Serbia. He submits that on this basis he should be paid the domestic rate of New Zealand Superannuation.

Decision

[11] Section 21 of the New Zealand Superannuation and Retirement Income Act 2001 (the Act) provides that a person is not entitled to New Zealand Superannuation

while that person is absent from New Zealand, unless they can bring themselves within one of the exceptions to that rule contained in ss 22-35 of the Act, or there is an agreement between New Zealand and the overseas country which covers the particular person's situation. New Zealand does not have an agreement on social security with Serbia.

[12] Section 26 of the Act provides for a person who is intending to reside for a period longer than 26 weeks in a country, (or two or more countries) or intending to travel for a period longer than 26 weeks, to be paid New Zealand Superannuation overseas. Certain conditions are attached to this entitlement. Of particular significance is the fact that a special rate known as the "portable rate" of New Zealand Superannuation is paid, rather than the full domestic rate. The rate of what is called "portable superannuation" is calculated in accordance with s 26(6) and s 26A of the Act.

[13] Section 26(6) provides for the rate of New Zealand Superannuation that is to be used in making the calculation provided for in s 26A. The rates payable are either a proportion of the single rate specified in clause 1(b) of Schedule 1 or a proportion of the married rate specified in clause 1(c) of Schedule 1.

[14] Section 26A provides for the actual calculation of the amount of New Zealand Superannuation payable overseas. This formula requires the Chief Executive to calculate the number of whole calendar months a person has resided in New Zealand between the age of 20 and 65 and divide the number of whole calendar months by 540.

[15] In the appellant's case, his periods of residence in New Zealand have been rounded up to 135 months. This figure has been divided by 540 and multiplied by the rate of New Zealand Superannuation the appellant would receive if he lived in New Zealand. In the appellant's case the single sharing rate of \$377.05 was used, to give a figure of \$94.26:

$$\frac{135}{540} \times \$377.05 = \$94.26$$

[16] The appellant challenges this calculation on two grounds; the first is that he says that he should be treated as a missionary.

[17] It seems the appellant may have misunderstood the provisions of s 26A(2)(b). In summary, s 26A(2)(b) provides that 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 to be resident and present in New Zealand for the purpose of calculating the number of months they have lived in New Zealand between the ages of 20 and 65 years.

[18] It is important that the appellant understand that the provisions of s 26A impact only on the number of months that should be included in the calculation of his periods of residence in New Zealand. Even if he had been a missionary between the ages of 20 and 65, it would not entitle him to be paid the full domestic rate of New Zealand Superannuation in Serbia.

[19] Whilst the appellant cares for his wife and children, he does not suggest that his work is carried out as either a member of or on behalf of a religious body. Nor is there any suggestion he was engaged in missionary work between the ages of 20 and 65. We are not satisfied that the appellant is or was a missionary.

[20] We are not persuaded that the number of months included in the formula used to calculate his Superannuation entitlement should be increased.

[21] Secondly, the appellant says that he falls within the exception contained in s 24 of the Act. This particular exception enables a person who, while absent from New Zealand for a period of up to three years, can continue receiving the domestic rate of New Zealand Superannuation where he or she:

- (c) is engaged ... in full-time voluntary and unpaid humanitarian work for a recognised aid agency that—
 - (i) has, as its principal function, the giving of aid and assistance to less advantaged communities in 1 or more other countries; and
 - (ii) has not deprived another person of paid employment to engage the person to do that work on an unpaid basis.

[22] The appellant says that he has taken up voluntary work with Red Cross in Serbia and should therefore be paid the domestic rate of New Zealand Superannuation for the first three years of his absence from New Zealand.

[23] On behalf of the Chief Executive it is submitted that the appellant is not engaged in full-time unpaid work with the Red Cross but has registered with that organisation as a volunteer and carries out the volunteering activities as and when required. It is submitted that the information available is that the appellant left New Zealand to care for his sick wife and two children. It is accepted that the Red Cross should be regarded as a recognised aid agency.

[24] The evidence of the appellant's work with Red Cross in Serbia is that:

(i) The appellant says that he joined the Red Cross in Serbia following catastrophic flooding in Serbia in May and June 2014.

(ii) A letter from Red Cross of the City of XXXX states:

This is to certify that Mr XXXX member of the Red Cross of Serbia is volunteer and engaged in humanitarian/volunteering missions.

Mr XXXX is called upon as need may be to work in the following humanitarian missions:

Collection of humanitarian aid, and its distribution to the affected population.

Evacuation of affected population due to-flooding, fire, natural disasters, caring and helping old and sick persons, blood donation missions.

(iii) An email from the appellant dated 17 July 2014 states:

I am volunteering for the Red Cross of Serbia in capacity of full time volunteer. My duties include helping people in various situations, including delivery of essential items to flood-stricken population of Serbia, assisting old and needy people as demand by the Red Cross organisation, helping with blood donations in emergency apperals (sic) as needs may be. I am the role of full-time volunteer, unpaid and on-call depending what the needs may be. I assumed this role because I am in a better situation to make short absences from my sick wife, who is undergoing treatment, and two small children which were, in my absence put into orphanage.

I could not leave my wife and children to come to New Zealand to register for that role since I am under strict instructions from the Social Services of Serbia not to leave my stranded wife and children. In such a case, my children would be taken from me and given for care to foster parents and nobody would be able to care for my sick wuife (sic) XXXX.

[25] The letter from the Red Cross of XXXX is telling. The letter advises that the appellant is called upon "as need may be". This suggests that he is called upon as and when required. The appellant's own letter refers to his being able to be absent from his wife and children for short periods of time. It is an essential element of s 24 of the Act that the person be engaged in full-time voluntary work with a voluntary organisation. Taking into account the demands of caring for his wife and children and the information from the Red Cross of XXXX, we are not satisfied that the appellant is engaged in full-time voluntary work for the Red Cross. We also note that as the appellant is apparently seriously short of money, if in fact his duties in respect of his wife and children give him time to work, then we would have thought his efforts away from home would be directed towards paid employment.

[26] We are not satisfied that the appellant meets the criteria of s 24 to be regarded as a full-time volunteer with the Red Cross and therefore entitled to the exemption in

s 24 of the Act which would allow him to be paid the domestic rate of New Zealand Superannuation for the first three years of his absence from New Zealand.

[27] We accept that the appellant has found himself in a difficult position in regard to the payment of New Zealand Superannuation; however neither the Chief Executive nor this Authority has any discretion to take into account the individual circumstances of the appellant.

[28] The appeal is dismissed.

DATED at WELLINGTON this 15th day of October 2015

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member

SSA158-14.doc(jeh)