

[2015] NZSSAA 098

Reference No. SSA 020/15

IN THE MATTER

of the Social Security Act 1964

AND

IN THE MATTER

of an appeal by **XXXX** of
Coopers Beach against a
decision of a Benefits Review
Committee

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

Ms M Wallace - Chairperson
Mr K Williams - Member

DECISION ON THE PAPERS

Introduction

[1] The appellant appeals against a decision of the Chief Executive upheld by a Benefits Review Committee to deduct a lump sum payment of Additional Pension from the United Kingdom from one fortnightly payment of New Zealand Superannuation.

[2] The deduction was made pursuant to the provisions of s 70 of the Social Security Act 1964.

Background

[3] The appellant was granted New Zealand Superannuation at the Living Alone rate from 16 January 2014. We understand that at the time of her application she was in receipt of a Sickness Benefit and had been in receipt of this benefit since 2009.

[4] As part of the application requirements the appellant was required to make an application for a pension from the United Kingdom, as she had indicated in her application forms that she had worked in the United Kingdom between 1991 and 1997. The Ministry was subsequently advised by the United Kingdom Pension

Service that the appellant had been granted a United Kingdom pension of £2.15 per week from 20 January 2014. This amount was paid into the “Special Banking Option” account as directed by the appellant in her application.

[5] The appellant subsequently received a letter from the United Kingdom Pension Service advising that a lump sum had been paid to her as a result of not claiming for the United Kingdom pension from age 60. The lump sum payment was also paid into the Special Banking Option account on 15 April 2014. The appellant contacted the Ministry about this and requested that the money be paid into her personal bank account. The amount of the lump sum was £553.89 or NZ\$1,066.49.

[6] The Chief Executive made a decision to deduct the amount of the lump sum payment from one fortnightly payment of New Zealand Superannuation and remit the balance of the funds to the appellant. The balance was calculated as follows:

Lump sum received	\$1,066.49
Deduction (one two-week instalment of NZS)	<u>\$843.52</u>
Difference paid to personal account on 24 June 2014	\$222.97

[7] 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.

[8] The appellant contends that the full amount of the lump sum payment should be refunded to her. She notes the following:

- (i) She would like the situation to be checked.
- (ii) She questions whether she might have an entitlement to any accumulated interest if the lump sum sat in a Special Banking account from April to July.
- (iii) She has received advice that the Ministry could not take a lump sum.
- (iv) She had contacted the Ministry of Social Development and been told that she could claim it back.
- (v) The appellant paid tax in the United Kingdom to cover this pension.

Decision

[9] The appellant became eligible to apply for a pension from the United Kingdom when she attained the age of 60 years. Although she was in receipt of an unemployment benefit when she turned 60 years of age, she was not requested by the Chief Executive to make an application for a United Kingdom pension until she applied for New Zealand Superannuation five years later.

[10] The provisions of s 70 of the Social Security Act 1964 require the Chief Executive to deduct the amount of any benefit or pension payment received from overseas, from entitlement to New Zealand Superannuation or any other benefit paid pursuant to the New Zealand Income Support legislation, in certain circumstances. The essential elements of s 70 are that where:

- a benefit, 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; 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 Veteran's Support Act 2014; and
- the programme is administered by or on behalf of the government of the country from which the benefit, pension or periodic 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 or the Veteran's Support Act 2014.

[11] The Authority and the High Court have previously found that payments received from the United Kingdom Pension Service and payable pursuant to the Social Security Contributions and Benefits Act 1992 and related legislation, meet the criteria of s 70 and must be deducted from entitlement to any benefits received in New Zealand.¹ In addition, the reciprocal agreement on social welfare with the United Kingdom² requires benefits and pensions received from the United Kingdom to be deducted from New Zealand entitlements.

¹ See for example *Dunn v Chief Executive of the Ministry of Social Development* [2008] NZAR 267 (HC); [2008] NZCA 436; [2009] NZAR 94 (CA).

² Social Welfare (Reciprocity with the U.K.) Order 1990.

[12] The payment received is a lump sum payment of Additional pension. It is an accumulation of the weekly amounts as set out in paragraph 5.32 of the Section 12K Report plus a small additional amount which the Ministry calculate to be £32.00, payable because the appellant deferred claiming for this pension for five years, rather than claiming her pension at age 60.

[13] The correct approach to the payment would have been for the Chief Executive to conduct a backdated review of the appellant's benefit entitlement under s 81 and deduct the weekly amounts set out in para 5.32 from her entitlement to benefit over the period back to 19 January 2009. This is because the lump sum represented an accumulation of pension entitlement which was paid in respect of a backdated period. Had the appellant not been in receipt of a benefit throughout that period, then she would have been entitled to receive the arrears.

[14] We do not think there is any basis for the Chief Executive to retain a lump sum payment of pension if the payment related to a period that the beneficiary was not receiving a benefit or pension in New Zealand. However, in this case the appellant was in receipt of a benefit throughout the period to which the payment related. Ideally the Chief Executive ought to have asked the appellant to claim her United Kingdom pension when she turned 60 years of age and deducted the amount received on a weekly basis from the appellant's entitlement to benefit.

[15] As to the additional £32 received because of the delay in the appellant applying for her pension, that is a pension payment that also meets the criteria of s 70. Moreover, the payments to which it relates should have been paid to the Ministry or deducted from the appellant's earlier entitlement to benefit. It should also be deducted.

[16] The Chief Executive was in error in charging the full amount of the payment received against one benefit payment and refunding \$222.91 to the appellant. The error is in favour of the appellant. The payment meets the criteria of s 86(9A) and should be written off.

[17] In summary, the full amount of the payment ought to have been spread over the period to which it related and deducted from benefit received during that period. We are satisfied the Chief Executive was entitled to deduct the amount received from the appellant's benefit entitlement.

[18] The appeal is dismissed.

DATED at WELLINGTON this 11th day of December 2015

Ms M Wallace
Chairperson

Mr K Williams
Member

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