

[2015] NZSSAA 099

Reference No. SSA 122/15

IN THE MATTER

of the Social Security Act 1964

AND

IN THE MATTER

of an appeal by **XXXX** of
Australia 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 1 December 2015 by telephone

APPEARANCES

The appellant in person

P Siueva for Chief Executive of the Ministry of Social Development

DECISION

Introduction

[1] The appellant appeals to the Authority against a decision of the Chief Executive, upheld by a Benefits Review Committee:

- to resume the grant of New Zealand Superannuation to the appellant from 17 December 2014;
- to make an arrears payment in respect of the period 17 December 2014 to 27 January 2015 to Centrelink Australia; and

- declining to pay the cost of attending the Benefits Review Committee hearing.

[2] The appellant also raised an issue regarding the non-payment of Accident Compensation once payment of New Zealand Superannuation commenced.

Background

[3] The appellant is aged 67 years. He is married. He was born in Samoa. He first moved to live in New Zealand in 1971 but returned to Samoa for a period in 1986. He arrived in New Zealand again in 1992 and lived here until 1997 when he moved to Australia. The appellant said that he moved to Australia as he had sisters and a daughter living there at the time.

[4] On 21 February 2013 the appellant applied for New Zealand Superannuation. His application was granted from 12 April 2013, pursuant to the terms of the Reciprocal Agreement with the Government of Australia.¹

[5] The Chief Executive subsequently received advice from Centrelink that the appellant had left Australia for Samoa on 19 October 2013. The Ministry added a bring-up for 22 March 2014 (six months after his departure for Australia) to check whether the appellant had returned to Australia. This was because under the Reciprocal Agreement, New Zealand Superannuation can only be paid for 26 weeks during a period of temporary absence outside Australia. Centrelink confirmed that the appellant had not returned to Australia and, as a result, the appellant's New Zealand Superannuation was suspended from 20 April 2014. The appellant subsequently communicated with the Ministry querying the suspension of his New Zealand Superannuation. He provided a copy of a declaration he had completed for Centrelink advising that he was intending to reside permanently in Samoa.

[6] The appellant sought a review of the decision. The matter was considered by a Benefits Review Committee. The appellant did not appeal the decision of the Benefits Review Committee at that stage.

[7] The appellant returned to Australia on 1 November 2014. A further application for New Zealand Superannuation was forwarded by Centrelink and received by the Ministry on 22 January 2015. The date of lodgement of his application with Centrelink was 17 December 2014.

¹ See Social Welfare (Reciprocity with Australia) Order 2002.

[8] The Ministry resumed the grant of New Zealand Superannuation to the appellant from 17 December 2014.

[9] The Reciprocal Agreement requires the Chief Executive to calculate the rate of New Zealand Superannuation payable to a person in Australia pursuant to a formula. The first element of the formula is to calculate the person's periods of working age residence in New Zealand between the ages of 20 and 65 years. The period is calculated in whole months. The Ministry calculated the appellant's period of working age residence in New Zealand to be 276 months. The second element of the formula is to calculate the maximum rate of New Zealand Superannuation payable and deduct from this amount an amount agreed between the New Zealand and Australian authorities which has been published in the *New Zealand Gazette*.

[10] The maximum rate payable at the time the appellant's payment of New Zealand Superannuation was resumed was \$319.23 gross per week. The deduction published in the *New Zealand Gazette* was 15 per cent, which reduced the maximum rate of New Zealand Superannuation to \$271.35 gross per week. The formula assessment to produce the proportional rate of New Zealand Superannuation payable to the appellant was as follows:

$$\frac{\begin{array}{l} 276 \\ \text{(months' working age} \\ \text{residence in NZ)} \end{array} \times \begin{array}{l} \$271.35 \\ \text{(maximum NZ Superannuation} \\ \text{rate payable)} \end{array}}{540} = \$138.68 \text{ gross}$$

(working months' working age residence between 20-65 years)

[11] The New Zealand proportional rate payable to the appellant as a result of this assessment was therefore \$138.68 gross per week.

[12] Article 9.3 of the Reciprocal Agreement provides that regardless of the proportional rate calculated, the New Zealand Government must not pay more than the amount of the Australian Age Pension that would have been payable to the person if he or she was entitled to receive an Australian Age Pension but not entitled to receive New Zealand Superannuation. The reason for this requirement is said to be to ensure that recipients of New Zealand Superannuation in Australia do not receive more than recipients of Australian Age Pension in Australia who are not entitled to New Zealand Superannuation.

[13] In this case, Centrelink advised that the notional annual rate of the appellant's Australian Age Pension from 17 December 2014 was AUD16,744 (NZD18,354.77 or NZD352.98 gross per week). In this case, the New Zealand proportional rate of \$138.68 gross per week was the lesser rate. Payment of New Zealand

Superannuation was resumed at the proportional rate of \$138.68 gross per week from 17 December 2014.

[14] Arrears of New Zealand Superannuation of \$832.11, covering the period 17 December 2014 to 27 January 2015, were paid to Centrelink.

[15] The appellant sought a further 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.

[16] The appellant confirmed at the hearing before the Authority that he no longer sought to challenge the Ministry's calculation of his periods of working age residence in New Zealand, this being one of the matters raised at the Benefits Review Committee hearing.

Decision

[17] Section 21 of the New Zealand Superannuation and Retirement Income Act 2001 (the Act) provides that New Zealand Superannuation cannot be paid overseas except as provided for in ss 22–35 of the Act or under any agreement or convention adopted under s 19 of the Social Welfare (Transitional Provisions) Act 1990. New Zealand has a reciprocal agreement with Australia. This Agreement governs the way in which New Zealand Superannuation can be paid in Australia.

Payment in Samoa for more than 26 weeks

[18] Although the appellant did not lodge an appeal in relation to the Benefits Review Committee decision of 29 July 2014, relating to the 26-week limit on paying New Zealand Superannuation while he was in Samoa, we think it appropriate to extend time for filing an appeal and treat this appeal as also relating to that issue. In the first instance, therefore, we have addressed the issue of payment to the appellant in Samoa.

[19] The only basis on which the appellant could be paid New Zealand Superannuation when he left Australia for Samoa is under the Reciprocal Agreement. Article 4 of the Agreement provides that the appellant can be paid New Zealand Superannuation for a period of 26 weeks. There is no other basis under the Reciprocal Agreement for the appellant to be paid for a longer period whilst living outside Australia. If the appellant had been living in New Zealand prior to his departure for Samoa, and was ordinarily resident in New Zealand at the time of his

application, he could have applied to be paid New Zealand Superannuation in Samoa on a long-term basis. Such an application needs to be made prior to departure in most circumstances.

[20] We are in no doubt that the Chief Executive's decision to suspend payment of New Zealand Superannuation after the appellant had been in Samoa for 26 weeks was correct. There was no legal basis on which the appellant could be paid New Zealand Superannuation while he was absent from Australia for a longer period.

Payment of arrears

[21] Following his return to Australia on 1 November 2014, Centrelink advised the Ministry that the appellant had returned to Australia. He made a further application for New Zealand Superannuation on 22 January 2015, although strictly speaking the existing grant had only been suspended. The appellant's application was processed and his New Zealand Superannuation was resumed, backdated to 17 December 2014. Arrears of \$832.11 for the period 17 December 2014 to 27 January 2015 accrued. The issue of payment of arrears is covered by the Reciprocal Agreement with Australia. We understand that in respect to the period 17 December 2014 to 27 January 2015, Centrelink paid the appellant his full pension entitlement while waiting for his New Zealand Superannuation payments to resume. Centrelink specifically requested that any arrears of New Zealand Superannuation payable to the appellant be paid to it in terms of article 19(3) of the Reciprocal Agreement.

[22] Put another way, the appellant is not entitled to receive the full amount of Australian Age Pension from Centrelink in addition to New Zealand Superannuation. Therefore, while Centrelink paid the appellant the full amount of his Australian Age Pension following his return to Australia, any New Zealand Superannuation payable during that period was payable to Centrelink.

[23] Had the appellant alerted the Ministry to the fact that he had returned to Australia on 1 November 2014, the Chief Executive could presumably have simply resumed the suspended payment to him; but if Centrelink commenced paying the appellant the full amount of the Australian Age Pension from 1 November 2014, any arrears would have to be paid to Centrelink. We are not satisfied that there were any arrears payable to the appellant.

Payment of cost of travel to Benefits Review Committee hearing

[24] Although the appellant was living in Australia at the time, he travelled to New Zealand to attend the Benefits Review Committee hearing of 22 June 2015. The appellant said that prior to the hearing he received a letter dated 21 April 2015 from the Ministry which encouraged him to attend. However, the Ministry have provided a copy of a letter dated 12 June 2015 sent to the appellant in which it is made clear that the Ministry does not pay for airfares and accommodation for clients from Australia to attend a Benefits Review Committee meeting in person. The letter notes that clients living in Australia have the option of attending by teleconference or having their representative attend the meeting. This letter was written in response to communications from the appellant dated 4 and 7 May 2015 in which he requested reimbursement of his costs for attending the hearing. This correspondence all took place before the hearing. Although it is possible the appellant had already made a booking by the time he received the Ministry's letter of 12 June, it would have been wise for the appellant to confirm that his travel costs would be paid before booking.

[25] This Authority does not have jurisdiction to direct that costs of travel to a Benefits Review Committee hearing be awarded, but in any event we note that the appellant was clearly informed prior to the hearing that the costs would not be reimbursed and that the appellant could participate in the hearing by telephone conference call. That was the more practical option.

[26] It is unfortunate that the letter of 21 April 2015 did not advise the appellant that as a person living in Australia, he could attend the hearing by telephone conference. We bring this to the attention of the Chief Executive and recommend that where a person seeking a review lives overseas, what is presumably a standard letter be adjusted to advise of the possibility of attending by telephone conference. We are not able to take this matter any further.

Payment of ACC

[27] We understand that while working in New Zealand in 1976, the appellant apparently suffered an accident and received earnings-related Accident Compensation until he was 65 years of age. The appellant feels it is unfair and inhumane to take away this compensation when he is older.

[28] This is not a matter that this Authority has jurisdiction to consider. The cancellation of the appellant's Accident Compensation payments when he attained the age of 65 years is a matter provided for in the Accident Compensation Act 2001. Any

complaint he has relating to this issue should be taken up with the Accident Compensation Corporation or the appropriate Minister.

[29] 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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