

[2016] NZSSAA 003

Reference No. SSA 106/15

**IN THE MATTER**

of the Social Security Act 1964

**AND**

**IN THE MATTER**

of an appeal by **XXXX** of  
Auckland 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] This proposed appeal relates to a decision of the Chief Executive to deduct the Disability Support Pension Ms XXXX receives from Australia from her entitlement to benefits in New Zealand.

[2] The original decision related to the deduction of the Australian Disability Support Pension from her New Zealand Sickness Benefit. Currently, the Australian Disability Support Pension is being deducted from her Invalid's Benefit.

[3] Ms XXXX's primary concern is that the total amount that she receives by way of benefit is inadequate to meet her living costs. She complains that she should be receiving a sole parent rate of benefit rather than a single rate of benefit.

[4] An appeal to this Authority was received by the Authority on 24 June 2015. The appeal relates to a decision of a Benefits Review Committee made on 28 May 2013.

[5] Appeals to this Authority must be made within three months of the Benefits Review Committee's decision. In short, this appeal is approximately 21 months out of time. The issue for the Authority is whether or not the Authority should extend the time for filing the appeal.

### **Decision**

[6] The matters to be considered by the Authority when determining whether or not an appeal should be considered out of time, include:<sup>1</sup>

- (i) The reasons for the delay in filing the appeal.
- (ii) The length of the delay and any resulting prejudice to the Ministry.
- (iii) The merits of the appeal.
- (iv) The justice of the case.

### *Reason for the delay*

[7] It is apparent that the appellant took this matter up with a number of other people before the appeal was eventually filed with the Authority. It appears that she was in touch with the Ombudsman's office in February 2014 and, prior to that, a Member of Parliament. However, as the submissions made on behalf of the Chief Executive point out, she was advised of her right to appeal to the Authority in the Ministry's original letter dated 11 June 2013. Furthermore, on 25 October 2013 a case manager reminded her of her right to appeal to the Social Security Appeal Authority if she wished to take a complaint regarding the deduction of her Australian pension further.

[8] The only explanation offered by the appellant for the delay in filing her appeal is that she had concerns about her mother and other family matters that required her to travel to Christchurch and Samoa, and a need to deal with other illness and death in her family.

[9] The Ministry note that it has a record of the appellant travelling out of the country three times during 2015, but apparently not in 2013/2014.

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<sup>1</sup> See *Stedmances v Stedmances* [1987] 2 NZLR 336 (CA).

[10] The Authority concludes that the delay in filing an appeal in this case is substantial. The appellant's reasons for the delay in lodging the appeal are not compelling.

*The merits of the appeal*

[11] The appellant is in receipt of a Disability Support Pension from Australia in addition to her New Zealand benefit. The matter considered by the Benefits Review Committee was the deduction of the appellant's Australian Disability Support Pension from the New Zealand benefit she was receiving at the time. This situation is governed by the provisions of s 70 of the Social Security Act 1964.

[12] Section 70 of the Social Security Act 1964 provides for benefits, pensions and periodical allowances received from overseas to be deducted from entitlement to New Zealand benefits in certain circumstances. The essential elements of s 70 are that where:

- a benefit or pension or periodical allowance granted overseas, which forms part of a programme providing benefits, pensions or periodical allowance, 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; and
- the programme is administered by or on behalf of the government of the country from which the benefit, pension or allowance is received;

that payment must be deducted from the amount of any benefit payable under the Social Security Act 1964.

[13] The provisions of s 70(1) are very wide. It is not necessary, for example, for the overseas pension or benefit paid to be identical to one of the benefits paid in New Zealand. The comparison is not between individual types of pension but between programmes for income support payable for any of the contingencies covered in the New Zealand income support legislation.<sup>2</sup>

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<sup>2</sup> See *Hogan v Chief Executive of the Department of Work and Income* (HC Wellington AP49/02, 26 August 2002); *Tetley-Jones v Chief Executive of the Department of Work and Income* (HC Auckland CIV-2004-485-1005, 3 December 2004).

[14] The appellant receives a partial Disability Support Pension from Centrelink in Australia which administers the Australian income support system. Although to date the Authority has not had to specifically consider the Disability Support Pension in the context of s 70, this pension is part of the Australian Government's programme for income support which provides for the same contingencies as provided for in the New Zealand income support programme. On the face of it, the payment meets the criteria for deduction pursuant to the provisions of s 70 of the Social Security Act 1964. No matters have been put before us which would suggest that the pension is not a pension which is caught by the provisions of s 70.

[15] The purpose behind s 70 is to ensure that persons who have lived overseas and are entitled to benefits and pensions paid by overseas countries are not advantaged over persons who have lived and worked in New Zealand throughout their lives. The deduction of Australian Disability Support Pension does not disadvantage the appellant; it simply means that she receives approximately the same amount of income support as a person who is not entitled to an Australian Disability Support Pension. Were she to receive both the full amount of her New Zealand benefit and the Australian pension payment she would be advantaged over other beneficiaries in a similar position to herself.

[16] The calculation of the amount of the Australian Disability Support Pension to be deducted from her New Zealand benefit is carried out pursuant to the provisions of the Social Security (Overseas Pension Deduction) Regulations 2013. Again no specific argument has been raised to demonstrate that the Ministry's application of the Regulations is wrong in this case.

[17] Finally, the appellant submitted to the Benefits Review Committee, and has repeated in her submission to this Authority, that she should be entitled to the sole parent rate of benefit rather than the single rate because she is a mother with family obligations. A sole parent rate of benefit is payable only if the individual has dependent children. Amongst other things, a child must be under the age of 18 years to be regarded as a dependent child. We understand the appellant does not have any children under the age of 18 years in her care.

[18] On the basis of the above, we are not satisfied that the appellant's appeal has any merit.

[19] Taking into account all of the circumstances outlined, we are not satisfied that the overall justice of this case is such that we should direct that the time for filing this

appeal should be extended. We are not prepared to extend the time for filing the appeal.

[20] The appeal is struck out.

[21] We appreciate that the appellant is aggrieved at the level of her income. The amount of benefit payments is fixed by the government. We note that she has high disability costs. She may wish to test her eligibility for Temporary Additional Support if she has not already done so.

**DATED** at WELLINGTON this 12<sup>th</sup> day of February 2016

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Ms M Wallace  
Chairperson

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Mr K Williams  
Member

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Lady Tureiti Moxon  
Member