

[2016] NZSSAA 055

Reference No. SSA 144/15

IN THE MATTER

of the Social Security Act 1964

AND

IN THE MATTER

of an appeal by **XXXX** of
Tauranga 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

HEARING at Auckland on 11 May 2016

APPEARANCES

The appellant in person
Ms P Siueva 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 require the appellant to make an application for a retirement benefit from the United States Social Security Administration.

[2] The appellant seeks to defer making an application for his United States retirement benefit on the basis that a higher rate of benefit will be received if he defers making an application until age 70, and on the basis of the appellant's claim that part of his United States retirement benefit entitlement is the result of voluntary contributions.

Background

[3] The appellant was granted New Zealand Superannuation from 25 September 2013 on attaining the age of 65.

[4] The appellant is a citizen of the United States by birth and immigrated to New Zealand in 1975 when he was 27. He subsequently spent two periods in the United States, being a period of 10 years from October 1987 to October 1997 and a further period from October 2004 to November 2005.

[5] Following the grant of New Zealand Superannuation, the appellant was requested to make an application for a retirement benefit to the United States Social Security Administration. The Ministry has made a number of requests to the appellant to complete an application for a United States benefit but the appellant has declined to do so.

[6] The appellant seeks to defer making an application for a retirement benefit from the United States Social Security Administration on the basis that:

- (i) The amount that he receives from the United States scheme will be greater if he defers his claim until the age of 70 years.
- (ii) He invested voluntarily in the United States Social Security scheme; particularly in the period from 1987 until October 1997, and he would be financially disadvantaged if he was now forced to apply for the retirement benefit.

Decision

[7] Section 69G of the Social Security Act 1964 requires an applicant for New Zealand Superannuation to take all reasonable steps to obtain any overseas benefit or pension to which they may be entitled.

[8] The Chief Executive has a discretion to give written notice to an applicant instructing them to take all reasonable steps within a specified period to obtain an overseas pension. In the event that the person does not comply with any such notice, the Chief Executive may suspend any payment of New Zealand Superannuation until the appellant has taken all reasonable steps to obtain the overseas benefit or pension.

[9] The information available is that an applicant for a United States retirement benefit may start receiving benefits as early as age 62 or as late as age 70, however if

a claim is made at age 62 the pension payment will be reduced. If application is deferred until age 70 the benefit will increase by 8% for every year after full retirement age that the person has delayed collecting payments. For persons born between 1943 and 1954 the full retirement age is 66 years.

[10] There is no real dispute in this case as to whether the appellant has been requested to make an application for the United States retirement benefit but has not done so. He does not wish to make an application because he does not wish to apply until age 70.

[11] The provisions of s 69G(1) are mandatory. The appellant is obliged to provide information to the Chief Executive confirming that he has taken all reasonable steps to obtain an overseas benefit or pension.

[12] However, the Chief Executive does have a discretion as to whether to give a notice under s 69G(3), and under s 69G(4) to suspend the appellant's benefit.

[13] In the event that the appellant was granted a benefit or pension by the United States Social Security Administration, it is likely that the amount of that benefit will be deducted from his entitlement to New Zealand Superannuation pursuant to the provisions of s 70 of the Act.

[14] We do not propose to make any finding in relation to whether or not part of the appellant's contributions to the United States scheme were voluntary. There can be no dispute that at least until age 27 his payments were compulsory. If he wishes to receive New Zealand Superannuation, it is a requirement of receipt of that benefit that he take reasonable steps to apply for any overseas benefit or pension he is entitled to.

[15] The appellant has now reached the full retirement age of 66 years. We do not think there is any basis on which there should be any further deferral of the appellant's application for his United States retirement benefit.

[16] The Chief Executive is directed to give the appellant a final written notice requiring that he take all reasonable steps to apply for his United States retirement benefit within a period specified, which specifies the date his New Zealand Superannuation will be suspended if he does not comply with the notice.

[17] The appeal is dismissed.

DATED at WELLINGTON this 16th day of June 2016

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member

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