

[2016] NZSSAA 49

Reference No. SSA 015/16

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

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 establish and recover an overpayment of New Zealand Superannuation paid to the appellant between 1 February 2014 and 10 March 2015 amounting to \$1,945.30.

[2] The issue in this case is whether or not the debt should be recovered.

Background

[3] The appellant was granted New Zealand Superannuation from 11 January 2014 on his attaining the age of 65 years.

[4] The appellant was required by the Ministry to apply for Canadian Old Age Pension and Canada Pension Plan payments from XXXX.

[5] In 2015, the Ministry received advice that the appellant had begun receiving payments from XXXX. Advice was received that the appellant had received payment of a Canadian pension from February 2014 and had also received an arrears payment of \$1,133.16 (NZ\$1,056.19) and ongoing payments.

[6] On receipt of this advice, the Ministry completed a backdated review of the appellant's entitlement to New Zealand Superannuation. As a result, an overpayment of \$1,945.30 was established. The calculation of the overpayment is set out in exhibits 8A and 13 of the Section 12K Report.

[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 says the overpayment occurred because of delays by XXXX. He says that it is unfair that he should have to repay this debt. He attempted to have the Canada Pension Plan payments cancelled but was advised that it was too late for him to do so. He would prefer simply to receive New Zealand Superannuation.

Decision

[9] The appellant did not dispute the calculation of the debt in this matter.

[10] The issue is whether or not the debt should be recovered.

[11] Generally speaking, overpayments of benefit are debts due to the Crown and must be recovered. There is a limited exception to this rule contained in s 86(9A) of the Social Security Act 1964. This provision gives the Chief Executive the discretion not to recover a debt in circumstances where:

- (a) the debt was wholly or partly caused as a result of an error by an officer of the Ministry;
- (b) the beneficiary did not intentionally contribute to the error;

- (c) the beneficiary received the payments of benefit in good faith;
- (d) the beneficiary changed his position believing he was entitled to receive the money and would not have to repay it; and
- (e) it would be inequitable in all the circumstances, including the debtor's financial circumstances, to permit recovery.

[12] Pursuant to s 86(9B) of the Act, the term "error" includes:

- (a) the provision of incorrect information by an officer of the Ministry;
- (b) an erroneous act or omission occurring during an investigation of benefit entitlement under s 12; and
- (c) any erroneous act by an officer of the Ministry.

[13] The requirements of s 86(9A) are cumulative. If one of the criteria cannot be made out, it is not necessary to consider subsequent criteria.

[14] The first question to be asked is whether or not the debt arose as a result of an error on the part of an officer of the Ministry of Social Development in New Zealand. The appellant did not point to any error on the part of the Ministry. Rather, the appellant says the debt occurred because of the time taken by XXXX to grant the appellant's pension.

[15] Because we are not satisfied that there was any error on the part of the Ministry we cannot direct that this debt not be recovered.

[16] The appellant says that he would prefer not to receive the pension payments from Canada. It is a requirement of the Social Security Act 1964 that the appellant obtain any overseas pension he may be entitled to. As was pointed out to him at the Benefits Review Committee hearing, it is unfortunate that there is no reciprocal agreement with Canada which would enable the appellant's Canadian Pension payments to be paid into a special banking option which would simplify the process for the appellant.

[17] We appreciate that the situation that has arisen must be annoying for the appellant but the Chief Executive is applying the law enacted by Parliament. It is open to the appellant to negotiate a rate of repayment of the debt with the Ministry.

[18] The appeal is dismissed.

DATED at WELLINGTON this 31 day of May 2016

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member

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