

[2016] NZSSAA 063

Reference No. SSA 019/16

**IN THE MATTER**

of the Social Security Act 1964

**AND**

**IN THE MATTER**

of an appeal by **XXXX** of Lower Hutt  
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 WELLINGTON on 14 June 2016

**APPEARANCES**

Mr B XXXX for the appellant  
Ms E Kirkman 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 grant the appellant New Zealand Superannuation from the later date of 30 July 2015, being the date of her application for New Zealand Superannuation, rather than 18 March 2015 when she turned 65 years of age.

**Background**

[2] The appellant is a company director and farmer. She was born on 18 March 1950. She attained the age of 65 years on 18 March 2015.

[3] She did not make an appointment to apply for New Zealand Superannuation until 30 July 2015. She subsequently attended an appointment on 13 August 2015. She was granted New Zealand Superannuation from 30 July 2015.

[4] The appellant sought a review of decision as she sought to be granted New Zealand Superannuation from the date she became entitled to it, namely 18 March 2015. 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.

[5] The appellant's husband made a number of submissions to the effect that the Ministry had failed in its duty to inform the appellant that if she did not apply for New Zealand Superannuation on or before her birthday, payment to her could not be backdated.

## **Decision**

[6] The Authority did not receive a personal account from the appellant about the reason she failed to apply for New Zealand Superannuation before her birthday, or what steps she took to check on the requirements. We understand, however, that a letter was sent to her by the Inland Revenue Department advising her that she should apply for New Zealand Superannuation before she turned 65 years of age to avoid missing payments.

[7] Section 11 of the New Zealand Superannuation and Retirement Income Act 2001 provides that payment of New Zealand Superannuation commences on the date a person became entitled to receive it or the date on which application was made, whichever is the later date. In this case the later date is the date the application was made, which is accepted as being 30 July when the appellant made contact with the Ministry.

[8] The only circumstance in which backdating may occur is under s 80AA of the Social Security Act 1964. In summary, this section provides that where a person could not reasonably have been expected to apply at an earlier time because of some erroneous action or inaction on the part of the department, backdating may occur. Section 80AA specifically provides that examples of erroneous action or inaction include:

- (a) Giving wrong advice.

- (b) Erroneously failing or refusing to provide information, help, or some document or form.

[9] It is submitted on behalf of the appellant that the Ministry failed in its duty to ensure that sufficient information was provided that persons about to turn 65 years of age must make their application for New Zealand Superannuation on or before their birthday and that they will not be entitled to a backdated payment if application is made after their birthday.

[10] Decisions under s 80AA can be made only to the Chief Executive in person. In this case we understand that the Chief Executive has not considered this matter. As a result, the Authority does not have jurisdiction under s 12J of the Social Security Act 1964 to consider making a backdated payment under s 80AA. The Authority therefore directs that the Chief Executive consider this matter pursuant to the provisions of s 80AA of the Social Security Act 1964.

[11] The Chief Executive is to report to the Authority within three months of the date of this decision on the outcome of his consideration.

[12] The appeal is adjourned.

**DATED** at WELLINGTON this 30<sup>th</sup> day of June 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