

IN THE MATTER

of the Social Security Act 1964

AND

IN THE MATTER

of an appeal by **XXXX** of XXXX
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] The appellant appeals against a decision of the Chief Executive, upheld by a Benefits Review Committee, to deduct the amount of the retirement payment received by the appellant's wife from the United States of America, from the appellant's entitlement to New Zealand Superannuation.

Background

[2] The appellant is a married man aged 65 years. He was born in New Zealand.

[3] He applied for New Zealand Superannuation on 4 September 2015 in anticipation of obtaining the age of 65 years on XX September 2015.

[4] The appellant disclosed in his application that his wife was receiving a monthly retirement pension of \$US1,396 from the Social Security Administration of the United States of America.

[5] It was assessed that because his wife's retirement pension from the United States exceeded the half married rate of New Zealand Superannuation the appellant may have been entitled to receive, the rate of New Zealand Superannuation payable to the

appellant was nil. As a result, the appellant's application for New Zealand Superannuation was declined.

[6] 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 appealed to the Authority.

Legislation Relevant to this Appeal

[7] 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 or that person's spouse, partner or dependent; 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 or the New Zealand Superannuation and Retirement Income Act 2001 or the Veteran's Support Act 2014; and
- the programme is administered by or on behalf of the government of the country from which the benefit, pension or periodical allowance is received;

that payment must be deducted from the amount of any benefit payable under the Social Security Act 1964 or the New Zealand Superannuation and Retirement Income Act 2001 or the Veteran's Support Act 2014.

[8] 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.¹

¹ See *Hogan v Chief Executive of the Department of Work and Income New Zealand* HC Wellington AP49/02, 26 August 2002; *Tetley-Jones v Chief Executive of the Department of Work and Income New Zealand* HC Auckland CIV-2004-485-1005, 3 December 2004.

Decision

[9] The first issue for the Authority to consider is whether the United States of America has a programme providing for benefits, pensions and periodic allowances for the contingencies for which benefits, pensions and periodic allowances are paid under the New Zealand programme for income support contained in the Social Security Act 1964, the Veterans Support Act 2014 and the New Zealand Superannuation and Retirement Income Act 2001.

[10] The United States of America's Social Security Act was first passed into law on 14 August 1935 under the administration of Franklin D Roosevelt. The programme provides for the contingencies of retirement/old age, disability, survivors, family benefits, unemployment benefits, and health insurance and other matters.

[11] The particular part of the programme that the appellant's wife receives her retirement payment from is in Title II which provides for the Federal Old Age, Survivors and Disability Insurance Benefit programme which is provided for in Title II of the Act.² This part of the programme is funded by social security taxes collected from individuals in employment. It provides for the contingencies of retirement/old age, disability, survivors, dependents and Medicare. Persons with a minimum of 40 credits (the equivalent of 10 years of work) qualify for benefits and pensions under this part of the United States income support programme.

[12] Title XVI of the Social Security Act of the United States of America (see footnote 2) provides Supplemental Social Security for the contingencies of retirement, disability and Medicare benefits. It provides for persons whose entitlements under the Federal Old Age Survivors and Disability Insurance Benefit programme are insufficient to meet their needs or who have no entitlement. Benefits from this part of the programme are paid out of general taxation assuring a minimum monthly income for elderly and disabled persons.

[13] In summary the Social Security Act of the United States of America provides a programme for income support in that country.

[14] The New Zealand income support programme includes provision for the contingencies of old age/retirement (New Zealand Superannuation), unemployment (Job Seeker Support), temporary sickness, invalidity and disability (Supported Living Payment

² See 42 United States Code Chapter 7.

and Disability Allowance) survivors, (Orphans Benefit and Supported Living Payment), and certain other circumstances.

[15] It is not necessary that the United States programme provide for all of the circumstances provided for in the New Zealand income support programme. Provision for only one of the contingencies will suffice. Nor is it necessary to compare funding mechanisms or entitlements. We are in no doubt that the United States has in place a programme for income support for one or more of the contingencies provided in the New Zealand income support programme e.g. old age/retirement.

[16] The issue then is whether or not the programme is administered by or on behalf of the Government of the United States of America. The Social Security Act in the United States of America is legislation enacted by the United States Government. Section 901 of that Act (see footnote 2) establishes an agency known as the Social Security Administration whose duty it is to administer the Old Age, Survivors, and Disability Insurance programme and the Supplemental Social Security programme established under the Act. The United States Social Security Administration is in effect a department of the United States Government.

[17] Section 902 provides for the appointment of a Commissioner of Social Security appointed by the President by and with the advice and consent of the Senate. Section 903 provides for the establishment of a Social Security Advisory Board also appointed by the government.

[18] We are in no doubt that the programme for income support contained in the United States of America Social Security Act is administered by or on behalf of the Government of the United States of America.

[19] Finally we must be satisfied that the appellant or the appellant's wife receives a payment from the United States Government programme.

[20] The information confirming the receipt by the appellant's wife of an overseas pension comes from the Social Security Administration of the United States of America.

[21] We are in no doubt that the payment the appellant's wife receives is from a programme in the United States of America which provides benefits, pensions and periodical allowances for one or more of the contingencies provided for in the New Zealand Income Support legislation and that it is a programme administered by and on

behalf of the United States Government. As a result s 70 of the Social Security Act 1964 requires any benefit received by the appellant under the New Zealand legislation to be reduced by the retirement payment received by his wife.

[22] We note that the High Court has previously confirmed that payments from the United States of America Social Security Administration meet the criteria for deduction under s 70.³ We are bound by that decision.

[23] The appellant says that he is being treated unfairly and that he and his wife should be treated as individuals; the same as other New Zealand citizens when it comes to determining their New Zealand Superannuation entitlement. The appellant says that he has paid New Zealand taxes for over 47 years. He now finds that none of this money is coming back to him purely because his new wife is American. The appellant submits that it is strange that the New Zealand Government expects another Government to subsidise the support of New Zealand citizens under s 70 of the Act. The effect of the decision has left him feeling betrayed. It means that he will have to remain working for some years to come as he had planned for his retirement on the basis of receiving New Zealand Superannuation. He submits that the payment his wife receives is comparable with Kiwisaver as it is based on individual member's contributions.

[24] The appellant requests that he be exempt from the effects of s 70 of the Act.

[25] We do not think that a comparison between the United States scheme and Kiwisaver can be made. Kiwisaver is not a compulsory scheme.

[26] We can understand the appellant being annoyed that he is not treated separately from his wife given the years that he has contributed to the taxation base in New Zealand. New Zealand Superannuation however, is a benefit paid out of current taxation. With the exception of a period between 2000 and 2008, when funds were set aside from Government surplus into a fund now known as the New Zealand Superannuation fund, there have been no funds set aside from taxation paid by the appellant to pay this benefit. In effect, the New Zealand Government has determined that those who have lived and worked and who are entitled to payments from the Government schemes of overseas countries they have worked in, should not be advantaged over those who have spent all of their working lives in New Zealand. Benefits generally take into account the domestic circumstances of the recipient. In the

³ *Roe v The Social Security Commission* HC Wellington M270/86, 10 April 1987.

case of s 70, the Chief Executive is required to take into account the receipt of an overseas pension by a spouse.

[27] There is no provision for any exemption as requested by the appellant. We appreciate that the appellant must have been shocked to discover that he was not entitled to receive New Zealand Superannuation as a result of receipt by his wife of a retirement pension from the United States of America. We have no discretion in the matter.

[28] We are satisfied that the amount the appellant is entitled to receive by way of New Zealand Superannuation must be reduced by the amount received by his wife from the United States Social Security Administration pursuant to the provisions of s 70 of the Act.

[29] It may be that when the appellant's wife becomes entitled to New Zealand Superannuation, the appellant may become entitled to receive a partial payment in the future.

[30] The appeal is dismissed.

DATED at WELLINGTON this 29th day of July 2016

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member