

**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

**HEARING** at AUCKLAND on 14 November 2016

**APPEARANCES**

The appellant in person  
Ms N Jaura 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 declining the appellant's application for New Zealand Superannuation.

[2] The appellant's application was declined on the basis that he had not resided in New Zealand for five years after attaining the age of 50 years.

**Background**

[3] The appellant was born in New Zealand. On XXXX 1973 when he was 42 years of age he left New Zealand to reside on Norfolk Island. He remained living on Norfolk Island until XXXX 2015 when he returned to live in New Zealand on a

permanent basis. He had visited or transited through New Zealand on various occasions in the intervening period but not lived here.

[4] Following his resumption of residence in New Zealand in 2015 the appellant made application for New Zealand Superannuation. His application was declined on the basis that he had not been resident and present in New Zealand for five years since attaining the age of 50.

[5] 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.

[6] The appellant submits that throughout the period that he was absent from New Zealand on Norfolk Island he continued to own a commercial rental property in New Zealand and paid income tax on any income from that property. Having paid his income tax he believes he should be eligible for New Zealand Superannuation.

[7] On behalf of the Chief Executive, it is submitted that the provisions of s 79 of the Social Security Act 1964, which enable a person who has paid income tax in New Zealand while overseas to be treated as resident and present in New Zealand for the purposes of calculating entitlement to benefit, do not apply in the appellant's case because the appellant did not pay income tax on his earnings from employment in New Zealand.

## **Decision**

[8] There is no dispute in this case that the appellant was not resident in New Zealand for tax purposes while he was living on Norfolk Island and did not pay PAYE in New Zealand on his earnings from employment while working overseas. We understand the appellant was self-employed in a business on Norfolk Island.

[9] Section 8 of the New Zealand Superannuation and Retirement Income Act 2001 sets out the residence eligibility criteria for New Zealand Superannuation as follows:

- (i) The applicant must be ordinarily resident in New Zealand on the date of application.
- (ii) The applicant must have been resident and present in New Zealand for not less than 10 years since attaining the age of 20 years.
- (iii) The applicant must have been resident and present in New Zealand for not less than five years since attaining the age of 50 years.

[10] In this case, it is accepted that the appellant was ordinarily resident in New Zealand at the time of his application. It is also accepted that he met the requirement that he had been resident and present in New Zealand for 10 years since attaining the age of 20 years. However, on the face of it, the appellant does not meet the criteria of having been resident and present in New Zealand for five years since attaining the age of 50 years. The appellant does not dispute that he was not present in New Zealand for this period. Rather he says because he paid tax in New Zealand on income earned from his investment property, he should be treated as being resident and present in New Zealand throughout the period he paid tax. He submits he meets the criteria in this way.

[11] We note in passing that while the appellant informed the Authority that he had paid tax on rental income in New Zealand since 1973 he did not provide any evidence confirming this to be the case.

[12] Section 79 of the Social Security Act 1964<sup>1</sup> provides that where a person has been employed outside New Zealand, and their employer has deducted PAYE payments from their earnings under the New Zealand income tax legislation, the person can be treated as being resident and present in New Zealand during the period in which those payments were made for the purpose of establishing entitlement to benefits including New Zealand Superannuation.

[13] The appellant confirmed that he was self-employed in Norfolk Island and did not pay tax on the income he earned there in New Zealand, either by way of provisional tax or PAYE deductions.

[14] There is no provision giving a similar concession to that in s 79, to persons paying tax on investment income in New Zealand. Section 79 provides relief only for persons who pay tax in New Zealand on their income from employment overseas. In the circumstances, the appellant cannot take advantage of the provisions of s 79 of the Act. There is therefore no basis on which we can find that the appellant meets the requirement of being resident and present in New Zealand for five years since the age of 50 years.

[15] One option open to the appellant arises if he can bring himself within the terms of the reciprocal agreement between the Governments of Australia and New Zealand relating to social security.<sup>2</sup>

---

<sup>1</sup> There have been a number of changes to s 79 over the years but in each version the emphasis is on paying tax or being liable to pay tax on earnings from employment overseas. An amendment was made to s 79 on 10 April 2015. This amendment is backdated to 1987 for most people. The current version of s 79 therefore applies to the appellant's application.

<sup>2</sup> Social Security (Reciprocal Agreement with Australia) Order 2002.

[16] Prior to 1 July 2016, the definition of “Australia” in the reciprocal agreement did not include Norfolk Island, which we understand made its own arrangements for benefits and pensions.

[17] Since 1 July 2016, as a result of a change in the arrangements between Norfolk Island and Australia, the reciprocal agreement now extends to Norfolk Island.<sup>3</sup> As a result, if the appellant were to apply for and be granted the Australian Age Pension he may be eligible for a part-payment of New Zealand Superannuation.

[18] This was explained to the appellant at the hearing. He indicated that he did not wish to apply for the Australian Age Pension.

[19] We are satisfied that the Chief Executive was correct to decline the appellant’s application for New Zealand Superannuation on the basis that he did not meet the residence criteria.

[20] The appeal is dismissed.

**DATED** at WELLINGTON this 25<sup>th</sup> day of November 2016

---

Ms M Wallace  
Chairperson

---

Mr K Williams  
Member

---

Lady Tureiti Moxon  
Member

---

<sup>3</sup> See Social Security Act 1991 and Australian Norfolk Island Legislation Amendment Act 2015.