

**IN THE MATTER**

of the Social Security Act 1964

**AND**

**IN THE MATTER**

of an appeal by **XXXX** and **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 appellants in person  
E Kirkman for the Chief Executive of the Ministry of Social Development

**DECISION**

**Introduction**

[1] The appellants (Mrs XXXX and Mr XXXX) appeal against decisions of the Chief Executive upheld by a Benefits Review Committee, to deduct a pension received by Mrs XXXX from Germany from the entitlement of both herself and Mr XXXX to New Zealand Superannuation.

**Background**

[2] We understand the appellants are a couple but are not married. The appellants were born in Germany. They arrived in New Zealand on XXXX.

[3] In 2014 Mr XXXX applied for New Zealand Superannuation. Mrs XXXX was also asked to apply for New Zealand Superannuation as part of the process of considering Mr XXXX' application.

[4] The information provided to the Ministry was that as at 13 August 2014, Mrs XXXX received total monthly pension payments from Germany of €1,227.10. As a result, her entitlement to pensions from Germany exceeded her entitlement to New Zealand Superannuation. Mrs XXXX's application for New Zealand Superannuation was granted, but payment was suspended.

[5] Mr XXXX's entitlement to New Zealand Superannuation was granted but the payment to him was reduced by an amount of \$5,759 for the ensuing 12 months, that being the amount Mrs XXXX would receive in excess of her entitlement to New Zealand Superannuation in a 12 month period.

[6] The appellants sought reviews of these decisions. The matter was reviewed internally and by a Benefits Review Committee. The Benefits Review Committee upheld the decision of the Chief Executive. The appellants then appealed to this Authority.

[7] The appellants have explained that in 1993, Mrs XXXX was granted a Widow's Pension from a German organisation with responsibility for pension insurance for Seamen called Seekasse, following the death of her husband who was a Captain on an offshore fishing ship. Mrs XXXX's entitlement to this pension was based solely on her late husband's insurance record. At no time did Mrs XXXX contribute, either compulsorily or voluntarily, to this account. The appellants submit that Mrs XXXX's widow's pension entitlement from Seekasse is based solely on the event of the death of her husband and on his work history. It does not therefore fit under any of the events or contingencies in respect of which payments are made under the New Zealand legislation. They particularly made the point that New Zealand no longer has a benefit called a Widow's Benefit.

### **Legislation relevant to this appeal**

[8] Section 70 of the Social Security Act 1964 (the Act) 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.

[9] 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.<sup>1</sup>

### **Decision**

[10] The first question to be asked in a case such as this is whether or not the German Government has a programme which provides benefits, pensions or periodical allowances for the contingencies for which benefits, pensions or periodical allowances are paid under the New Zealand income support legislation contained in the Social Security Act 1964, the New Zealand Superannuation and Retirement Income Act 2001 or the Veteran's Support Act 2014.

[11] While the appellants place great store by the fact that the particular pension received by Mrs XXXX is a widow's pension and that the New Zealand income support legislation no longer specifically has a benefit called a "widow's pension", the requirement that New Zealand have a benefit identical to the benefit received from overseas is not the test laid out by s 70.

[12] 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. It is a common mistake for appellants appearing before the Authority wishing to establish that payments from the income support schemes from a particular country should not be deducted pursuant to the provisions of s 70, to dwell on the fact that the payments they receive are paid under different conditions, or funded differently or are a type of benefit or pension not provided for in New Zealand. It is a mistake because the legislative provision enacted by Parliament in s 70 does not require a direct comparison between particular benefits or pensions. The test in s 70 is whether or not the government of the overseas country has a programme which provides benefits, pensions or periodical allowances for any of the contingencies provided in the New

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<sup>1</sup> 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.

Zealand Government programme for income support contained in the Social Security Act 1964, the New Zealand Superannuation and Retirement Income Act 2001 and the Veteran's Support Act 2014.

[13] The New Zealand Programme for income support provides for the contingencies of old age/retirement (New Zealand Superannuation), unemployment and temporary sickness (Jobseeker Support), long-term invalidity and disability (Supported Living Payment), survivors (Orphan's Benefit) and certain other circumstances. The inquiry in this case, therefore, is whether or not the German Government has a programme designed to provide income support for its citizens and permanent residents for any of these contingencies. It is not necessary that the German Government programme provide for all of the circumstances provided 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.

*The German Government Programme for Income Support*

[14] The German social security or income support programme began under Chancellor Bismarck in the 1880s.

[15] At the present time, the programme for income support in Germany includes provision for the contingencies of invalidity, old age, survivors, accidents at work, occupational diseases, unemployment, sickness, housing, children's benefits and other matters.<sup>2</sup> The programme is supervised by five different government departments.<sup>3</sup>

[16] The delivery of the programme is provided by multiple organisations, some of which administer regional schemes, others of which are Federal schemes.

[17] The Authority noted in an earlier decision<sup>4</sup> that the statutory sickness insurance scheme, for example, was in the hands of roughly 540 insurance funds, some of which operated regionally and some of which operated at a national level at the time of that decision. Separate funds for old age pension insurance schemes were established for separate occupational groups such as farmers, seamen, miners, railway workers, white collar workers, blue collar workers and the like.

[18] The history of the provision for seamen is that accident insurance was first introduced specifically for seamen on 13 July 1887. Then in 1907, legislation providing benefits or pensions in circumstances where a seaman became disabled or died leaving a

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<sup>2</sup> Exhibit 2 *Social Security at a Glance* and Exhibit 3 *Your Social Security Rights*.

<sup>3</sup> Exhibit 5 of supplementary Section 12K Report.

<sup>4</sup> [2003] NZSSAA 212.

widow or orphans was enacted. This insurance was administered by the Seekasse, which was the organisation which originally granted a widow's benefit to Mrs XXXX.

[19] In 1928, a scheme for health insurance for seamen was enacted. In 1974, what is referred to as a "checkout" scheme, to provide a bridging payment from retirement until statutory pension insurance for seamen, was put in place.

[20] On 1 October 2005, there was a substantial reform of income support in Germany. As a result, the Seekasse was amalgamated with the Federal Miners Insurance Institution and the Railways Insurance office. The scheme for those industries is now administered by the Deutsche Rentenversicherung Knappschaft – Bahn – See. This is the organisation which now pays the pension Mrs XXXX receives.

[21] This is one of four organisations administering invalidity, old age and survivors pensions. Overall supervision of these organisations is in the hands of the Federal Ministry of Labour and Social Affairs.

[22] We are in no doubt that at the time Mrs XXXX's widow's pension was granted, there was, and at the present time there is, a programme for income support in place in Germany which provides for one or more of the contingencies provided for in the New Zealand income support programme, e.g. old age, sickness or unemployment.

*Administered by or on behalf of the German Government*

[23] The Government of Germany is responsible for a variety of legislation governing the various schemes which make up the German income support programme. The Federal Ministry of Labour Social Affairs, which is a department of the German Government, is responsible for the supervision of the various organisations which pay old age invalidity and survivors' benefits and pensions. We are satisfied that the programme is administered on behalf of the Government of Germany.<sup>5</sup>

[24] We are also satisfied that the payment Mrs XXXX receives is part of the German Government programme for income support.

*Deduction pursuant to s 70*

[25] As a result, any payment that Mrs XXXX receives must be deducted from her entitlement to New Zealand Superannuation pursuant to the provisions of s 70 of the Act. We are satisfied that the Chief Executive was correct to suspend Mrs XXXX's entitlement to New Zealand Superannuation.

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<sup>5</sup> Exhibits 2, 3 & 5 of Supplementary 12K Report.

[26] Section 70 also specifically provides that if a person's spouse or partner is entitled to receive, or receives a benefit, or pension, or periodical allowance granted elsewhere than in New Zealand then that person's benefit in New Zealand must be reduced by the amount of overseas pension received by a partner.

[27] Mrs XXXX's payment from her Seekasse widow's pension exceeds her entitlement to New Zealand Superannuation. We accept that Mr XXXX' entitlement to New Zealand Superannuation must be reduced by the amount of the overseas pension Mrs XXXX receives which is in excess of her entitlement to New Zealand Superannuation.

[28] The rationale behind s 70 is that persons entitled to overseas government administered pensions should not be advantaged over persons who have spent all of their working lives in New Zealand. We appreciate that Mr XXXX must find it disconcerting that his New Zealand Superannuation is reduced by the pension arising from the death of his partner's former husband, however, we have no discretion in the matter. If the pension is one that meets the criteria of s 70, the legislation as enacted by Parliament must be applied.

[29] The appeal is dismissed.

**DATED** at WELLINGTON this 31<sup>st</sup> day of August 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