

[2017] NZSSAA 027

Reference No. SSA 112/16

**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**

**S Pezaro** - Deputy Chair

**K Williams** - Member

**C Joe** - Member

**Hearing** at Auckland on 16 February 2017

### **Appearances**

The appellant in person

P Siueva for the Chief Executive of the Ministry of Social Development

## **DECISION**

### **Background**

[1] XXXX appeals the decision to deduct his Taiwanese benefit from his entitlement to New Zealand Superannuation (NZS). The decision was upheld by a Benefits Review Committee on 29 July 2016 and Mr XXXX filed his appeal on 21 September 2016.

[2] Mr XXXX was born in Taiwan and immigrated to New Zealand in 1991. On 27 November 2015 Mr XXXX applied for NZS before turning 65 on XX XXXX 2016. In his application for NZS Mr XXXX said that he was receiving from Taiwan an old age benefit from the Labour Insurance Programme (LIP) of TWD14,232 per month.

- [3] When Mr XXXX was advised that his application for NZS was granted he was also told that his Taiwanese pension would be deducted from NZS.

### Relevant law

- [4] Section 70(1)(b) of the Social Security Act 1964 provides that:

#### **70 Rate of benefits if overseas pension payable**

- (1) For the purposes of this Act, if—
- (a) any person qualified to receive a benefit under this Act or Part 6 of the Veterans' Support Act 2014 or under the New Zealand Superannuation and Retirement Income Act 2001 is entitled to receive or receives, in respect of that person or of that person's spouse or partner or of that person's dependants, or if that person's spouse or partner or any of that person's dependants is entitled to receive or receives, a benefit, pension, or periodical allowance granted elsewhere than in New Zealand; and
  - (b) the benefit, pension, or periodical allowance, or any part of it, is in the nature of a payment which, in the opinion of the chief executive, forms part of a programme providing benefits, pensions, or periodical allowances for any of the contingencies for which benefits, pensions, or allowances may be paid under this Act or under the New Zealand Superannuation and Retirement Income Act 2001 or under the Veterans' Support Act 2014 which is administered by or on behalf of the Government of the country from which the benefit, pension, or periodical allowance is received—

the rate of the benefit or benefits that would otherwise be payable under this Act or Part 6 of the Veterans' Support Act 2014 or under the New Zealand Superannuation and Retirement Income Act 2001 shall, subject to subsection (3), be reduced by the amount of such overseas benefit, pension, or periodical allowance, or part thereof, as the case may be, being an amount determined by the chief executive in accordance with regulations made under this Act:

- [5] The Act provides that certain benefits or pensions payable for injury, disability, death or war pensions are exempt but these exemptions are not applicable to Mr XXXX.
- [6] In *Boljevic v the Chief Executive of the Ministry of Social Development*<sup>1</sup> the High Court observed that the focus of the inquiry in s 70(1)(b) is whether the overseas programme includes payments for any of the same contingencies as

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<sup>1</sup> *Boljevic v the Chief Executive of the Ministry of Social Development* [2012] NZAR 280.

the New Zealand scheme. In *Boljevic*, as in Mr XXXX's case, the contingency was attaining a certain age. It is sufficient that the entitlements in each country are payable in similar circumstances; it is not necessary to conduct a close comparative analysis between the New Zealand and overseas entitlement.<sup>2</sup>

- [7] Nor is it necessary to distinguish between contributory and non contributory schemes; all funds are contributory whether the contribution is direct or indirect through income taxation.<sup>3</sup> In *Boljevic*, Kós J concluded that whether the programme is administered by the state is the crucial criteria, not state funding.
- [8] Recently in *T v Chief Executive of the Ministry of Social Development* the High Court considered the nature of payments from a Singaporean fund to which the appellant and his employers contributed as required by Singaporean law.<sup>4</sup> The court concluded that these payments were a pension because the fund was held by the Government for defined purposes and disbursed incrementally to the appellant to provide for his retirement or old age.
- [9] The court also considered whether an overseas pension in the nature of Kiwisaver fell within the provision of s 70(1)(b). Brewer J concluded that as Kiwisaver is a particular creation of New Zealand statute it stands apart from the regime created by s 70 of the Act.<sup>5</sup>

### **The issue**

- [10] The issue we need to address is whether the payments that Mr XXXX receives from Taiwan fall within the category of benefits, pensions, or allowances which are to be deducted from NZS in accordance with s 70(1)(b). A two-stage inquiry is required. The first step is to consider the nature of the payments received by Mr XXXX. The second step is to consider whether the payments he receives from Taiwan are part of a programme providing for retirement or old age that is administered by or on behalf of the Taiwanese Government.

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<sup>2</sup> *Dunn v Chief Executive of the Ministry of Social Development* [2008] NZAR 267.

<sup>3</sup> *Dunn v Chief Executive of the Ministry of Social Development* [2008] NZAR 267 at [38]-[39].

<sup>4</sup> *T v Chief Executive of the Ministry of Social Development* [2017] NZHC 711.

<sup>5</sup> *T v Chief Executive of the Ministry of Social Development* [2017] NZHC 711 at [13]-[15].

### **The case for Mr XXXX**

- [11] Mr XXXX says that the payments he receives from Taiwan are not a pension or a benefit because they come from a fund to which he has contributed and not from a pension funded solely by the Taiwanese Government. Mr XXXX compares the payments he receives to Kiwisaver. He argues that Kiwisaver is a similar scheme to the Taiwanese LIP as it includes a voluntary contribution from the account holder and is payable on attaining a certain age. Mr XXXX says that as Kiwisaver is not deducted from New Zealand Superannuation his payments from Taiwan should not be deducted either.
- [12] Mr XXXX also believes that an incorrect translation has contributed to the Ministry's conclusion that the payments he receives from Taiwan are a pension. He says that the translation of a letter from the Labour Insurance Bureau of the Ministry of Labour, Taiwan, verifying the payments he receives uses the word 'pension' not the correct translation which he says is 'payment'.<sup>6</sup>
- [13] This letter was translated for the Ministry by NZTC International, a translation service in New Zealand. The letter states:

According to our records you retired and ceased making superannuation contributions on 31 May 2011 and applied to draw an old-age pension on 10 June 2011. We started to pay your pension from June 2011 and continued to pay it at the end of every month in the value of TWD\$14,232.

- [14] Mr XXXX did not provide an alternative independent translation of this letter however we do not consider that the terminology used by the translator determines the outcome of this appeal. The issue we need to address is the nature and purpose of the payments Mr XXXX receives. What the payments are called by the body administering them is not relevant to this inquiry.

### **The case for the Ministry**

- [15] The Ministry submits that the payments Mr XXXX receives from Taiwan fall within the scope of s 70 of the Act and therefore must be deducted from his NZS entitlement.

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<sup>6</sup> Exhibit 7 in the Ministry's Section 12K report.

- [16] Taiwan has a social insurance system which involves a flat-rate benefit under the national pension programme and earnings related benefits under the labour insurance programme. The national pension programme offers protection to Taiwanese nationals who do not participate in government employee insurance schemes or labour insurance and includes cover for old age as well as other benefits. The Ministry accepts that Mr XXXX is not entitled to payments under this programme.
- [17] The Labour Insurance Programme to which Mr XXXX contributed is the result of several amendments to a scheme which is based on a compulsory premium, calculates as a percentage of a worker's salary up to a monthly maximum.
- [18] The Labour Insurance Programme is administered by the Bureau of Labour Insurance; part of the Ministry of Labour in Taiwan. Depending on circumstances, retired employees can claim for payments when they reach either 55 or 60. From 1 January 2009 retired employees could choose a monthly payment as an alternative to a lump sum payment.
- [19] The Ministry contends that the payments received by Mr XXXX meet the s 70 test for deduction from NZS because they are:
- a) administered by or on behalf of the government of a country other than New Zealand;
  - b) part of a programme which provides benefits, pensions, or periodical allowances for similar contingencies covered by New Zealand income support legislation; and
  - c) not a Government Occupational Pension such that they meet the exception for deduction.

### **Discussion**

- [16] The requirement in s 70(1)(b) for the Ministry to deduct any overseas payments that fall within the criteria of that section is consistent with the purpose of the Act which is to provide financial support to people, taking into account that they use the resources available to them before seeking the financial support available under the Act.<sup>7</sup>

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<sup>7</sup> Section 1A(c) of the Social Security Act 1964

[17] At the hearing of this appeal Mr XXXX accepted that whether contributions to a fund were compulsory or voluntary did not determine whether the fund was of the type that must be deducted from NZS. He also accepted that the Taiwanese LIP is Government administered.

[18] For the reasons given in *T v Chief Executive of the Ministry of Social Development*, the comparison between the LIP and Kiwisaver does not assist Mr XXXX. The New Zealand Government has made a specific provision for Kiwisaver independent of its provision for NZS.

[19] We are satisfied that the payments that Mr XXXX receives from the Taiwanese Labour Insurance Programme are payments in the nature of a pension. This pension is one of the contingencies for which NZS is provided, old age, and the scheme is administered in Taiwan on or on behalf of the government. It follows that the payments that Mr XXXX receives from Taiwan must be deducted from his NZS entitlement, in accordance with s 70(1)(b) of the Act.

### **Conclusion**

[20] The appeal is dismissed.

**Dated at Wellington** this 16<sup>th</sup> day of June 2017

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**S Pezaro**  
Chairperson

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**K Williams**  
Member

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**C Joe JP**  
Member