

[2017] NZSSAA 046

Reference No. SSA 099/16

**IN THE MATTER** of the Social Security Act 1964

**AND**

**IN THE MATTER** of an appeal by **XXXX** of  
Papamoa against a decision of  
a Benefits Review Committee

## **BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY**

**S Pezaro** - Deputy Chair

**K Williams** - Member

**Hearing at Auckland** on 26 July 2017

### **Appearances**

The appellant in person

P Suieva, agent for the Ministry of Social Development

## **DECISION**

### **Background**

[1] XXXX appeals the decision of the Chief Executive, upheld by the Benefits Review Committee, to establish and recover an overpayment of New Zealand Superannuation (NZS) paid to him between 8 June 2009 to 25 August 2015 and to his wife for the period 5 June 2013 to 25 August 2015. The Ministry claims that it overpaid Mr XXXX the sum of \$18,089.71 and his wife \$3,655.21.

[2] The overpayment occurred because Mr XXXX received payments of a United Kingdom (UK) pension which were paid directly to him from 5 June 2009. These payments were not deducted from his NZS payments.

**The case for the appellant**

- [3] Mr XXXX came to New Zealand in 1974. He applied for his NZS on 12 June 2009 and says that he completed all the relevant forms and sent them to WINZ. Around the same time he applied for and was granted a UK pension which was paid to him from 8 June 2009. He said at the hearing that he started to receive both pensions at around the same time.
- [4] At the hearing he confirmed that NZS and his UK pension were paid to the same BNZ account but said that he did not notice the UK payments. Mr XXXX describes a confused process whereby, at the time he qualified for NZS and started to receive payments of his UK pension, he was asked by WINZ to apply for the UK pension, obviously as WINZ was unaware that he was already in receipt of this payment. The Ministry agrees that Mr XXXX continued to receive letters and forms which indicated either that he had not yet applied for a UK pension or that an incomplete application form had been received from him.
- [5] It is also agreed that Mr XXXX told the Ministry that he was eligible for a Navy pension which was added to his income.
- [6] On 20 May 2013 Mr XXXX applied to include his wife as a non-qualified spouse for payment of NZS. In this application Mr XXXX declared that he was receiving the private Navy insurance. However shortly afterwards Mr XXXX advised WINZ that he no longer received the Navy insurance as the fund had collapsed.
- [7] In November 2013 International Services sent another letter to Mr XXXX and said that it did not appear that he had completed an application for the UK State pension despite being requested to in June 2009. Mr XXXX responded saying that he had already completed a UK pension application. However he did not say that he was in receipt of this pension.
- [8] Mr XXXX said that he understood that the UK pension would be deducted from his NZS entitlement from the outset. He stated that he did not know why it had not been deducted although he accepted that he had elected to receive it by direct payment to his bank account and not by the special banking option.

Had he chosen the special banking option, his UK pension would have been paid to WINZ and deducted from his NZS entitlement.

- [9] Mr XXXX referred to the following paragraph in the letter sent to him on 12 June 2009 about applying for his UK pension and said that he thought this meant that the deduction would be made for him:

By choosing the **direct payment**, it would mean that any United Kingdom pension payable would be paid direct to your personal bank account and this amount would be deducted from your New Zealand benefit/pension. The enclosed brochure explains this in more detail.

- [10] Mr XXXX said in the hearing that in hindsight he should have gone into WINZ and discussed the situation but he had a lot on his mind due to family circumstances. He believes he did all the right things and that it is the duty of the Chief Executive to assist people to comply with their obligations. He said he presumed that International Services should know that he was being paid and that they did not make any deductions. However he accepted that when he applied for NZS he did not state that he was also applying for the UK pension.
- [11] Mr XXXX said that he was confused because when he received the letter dated 12 June 2009 explaining how to apply for the UK pension he had already completed the application form and had received his first payment. He also said that WINZ lost his application for the UK pension.
- [12] Mr XXXX said that he did not accept the amount of the overpayment but he did not provide any evidence to show that the calculation of the sum was not correct.

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

- [13] The Ministry's submission is focused on whether the overpayment should be recovered as Mr XXXX accepts that his UK pension should be deducted from his NZS entitlement in accordance with s 70 of the Social Security Act 1964 (the Act).
- [14] The only exception to recovery of overpayments is provided for in s 86(9A) of the Act as follows:

*Debts caused wholly or partly by errors to which debtors did not intentionally contribute*

- (9A) The chief executive may not recover any sum comprising that part of a debt that was caused wholly or partly by an error to which the debtor did not intentionally contribute if—
- (a) the debtor—
    - (i) received that sum in good faith; and
    - (ii) changed his or her position in the belief that he or she was entitled to that sum and would not have to pay or repay that sum to the chief executive; and
  - (b) it would be inequitable in all the circumstances, including the debtor's financial circumstances, to permit recovery.
- (9B) In subsection (9A), **error**—
- (a) means—
    - (i) the provision of incorrect information by an officer of the department;
    - (ii) any erroneous act or omission of an officer of the department that occurs during an investigation under section 12;
    - (iii) any other erroneous act or omission of an officer of the department; but
  - (b) does not include the simple act of making a payment to which the recipient is not entitled if that act is not caused, wholly or partly, by any erroneous act or omission of an officer of the department.

- [15] The Ministry has no record of Mr XXXX advising it of the fact that he was receiving his UK pension. The Ministry also notes that when Mr XXXX was granted NZS he was sent a letter setting out the amount of his fortnight payment. The Ministry therefore submits that it must have been clear to Mr XXXX that he was receiving more than this amount and does not accept that he or his wife received the overpayments in good faith.

## Discussion

- [16] We accept that there was some confusion as to whether or not Mr XXXX had actually applied for the UK pension. However we consider that he did not take appropriate steps to reduce this confusion or clarify the fact that he was already in receipt of the pension. He had many opportunities to make it clear that his UK pension application had already been approved.
- [17] Mr XXXX received confirmation that his application for a UK pension was granted in a letter from the UK Pension Service dated 14 June 2009. At any

time over the relevant six-year period he could have provided a copy of this letter to WINZ which would have resolved the confusion about whether or not he had applied for this pension. However it appears from the correspondence in the Ministry's report that Mr XXXX continued to say that he had completed a UK pension application but not that he was already in receipt of this pension.

- [18] Each year since he became eligible for NZS Mr XXXX completed his annual review form for WINZ. At no time did he declare that he was receiving any overseas pension. In addition to the annual review forms that Mr XXXX completed he also completed an application for his wife's NZS entitlement and once that was granted he and his wife were asked to complete annual reviews. At no time did either of them declare the UK pension.
  
- [19] In total Mr XXXX failed to declare his UK pension for six years. It was not until September 2015 when International Services were advised by the UK Pension Service that Mr XXXX had been in receipt of a UK pension of £38.30 per week from 8 June 2009 that it appears that Mr XXXX acknowledged he was receiving the UK pension.
  
- [20] We accept that the amount of his UK pension was not a significant weekly amount. However we do not accept that it was likely that Mr XXXX failed to notice that he was receiving this pension because both the amount of the UK pension and the amount of his NZS entitlement were confirmed to him in writing and both were paid into the same account.
  
- [21] For these reasons we conclude that Mr XXXX cannot have received the overpayments in good faith as required in s 86(9A)(a)(i) of the Act. Therefore the Chief Executive is not prevented from recovering the debt. Accordingly this appeal is dismissed.

### **Order**

- [22] The appeal is dismissed.
  
- [23] The Ministry is entitled to recover overpayments of NZS paid to the appellant and his wife for the period 8 June 2009 to 25 August 2015. Payments have been made towards the overpayment. However if the parties cannot agree on

the sum payable they can file further submissions and directions will be issued accordingly.

**Dated at Wellington** this 15<sup>th</sup> day of August 2017

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**S Pezaro**  
Deputy chair

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**K Williams**  
Member