

[2019] NZSSAA 29

Reference No. SSAA 09/19

IN THE MATTER of the Social Security Act 2018

AND

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

DECISION OF THE SOCIAL SECURITY APPEAL AUTHORITY

Background

- [1] With the consent of the parties, this appeal has been determined on the basis of their written submissions.

- [2] XXXX ("the appellant") appeals the decision to grant payment overseas of New Zealand Superannuation ("NZS") at the rate of NZ\$141.60 gross per week from 18 April 2018. This decision was upheld by a Benefits Review Committee on 9 January 2019.

- [3] As noted in directions issued on 22 February 2019, the appellant did not provide a physical address for service in his Notice of Appeal. He provided an email address only. He subsequently provided his sister's address in Auckland and said that mail could be sent to him there.

- [4] On 5 February 2019 the appellant confirmed that he was leaving New Zealand for Gibraltar on 10 February 2019. He asked that his appeal be determined on the papers.

- [5] The appellant applied for NZS on 14 September 2015 advising that he had arrived in New Zealand from the United Kingdom on 26 July 1986. He was granted NZS from 25 September 2015 the date on which he reached 65 years of age.

- [6] On 19 October 2015 the appellant completed an application for United Kingdom Retirement Pension ("the UK pension"). Once the Ministry was advised by the United Kingdom Department of Work and Pensions ("the WP") that the UK pension was granted, the Ministry made a direct deduction of the UK pension from the appellant's NZS entitlement.

- [7] On 28 January 2016 the appellant attended an appointment with the Ministry and applied for portable payment of NZS overseas.
- [8] Customs NZ records produced by the Ministry show that between 25 April 2007 and 7 February 2016 the appellant spent approximately 20 percent of the total time in New Zealand. On 11 February 2016 the Ministry advised the appellant that it had decided that he did not qualify for portable NZS overseas because he was not ordinarily resident in New Zealand at the date of his application.
- [9] The Ministry subsequently reconsidered its decision and granted portable payment of NZS from 27 January 2016 on the basis that the appellant was intending to return to New Zealand permanently later that year. Portable payment of NZS was set at \$152.88 per week gross.
- [10] In August the appellant advised the Ministry that he intended to return to New Zealand in October but would depart again in March 2017. The Ministry advised the appellant that, as he would only return to New Zealand for 145 days, he could not transfer back to NZS at the domestic rate of payment for that period.
- [11] Subsequently in March 2018 the Ministry obtained further details of the appellant's travel movements from Customs New Zealand. The Ministry granted overseas payment of NZS at \$141.60 gross per week from 18 April 2018, calculated as shown in its report.
- [12] In July 2018 the Ministry established a debt based on a reassessment of the amount of time the appellant had resided in New Zealand in 2016. However, the Ministry subsequently disestablished this debt.

Relevant law

- [13] Section 26 of the New Zealand Superannuation and Retirement Income Act 2001 ("the Act") provides for payment of NZS overseas. Portable payment of NZS is calculated in accordance with s 26A of the Act.
- [14] Section 9 of the Act provides that periods of absence that meet certain criteria are counted as time spent in New Zealand. None of these apply to the appellant.

- [15] Section 79 of the Social Security Act 1964 allows a person who has had income tax deducted from overseas earnings, in certain circumstances, to count the period of overseas employment as time spent in New Zealand.

The case for the Ministry

- [16] The Ministry submits that it has calculated the time the appellant resided in New Zealand between the age of 20 and 65 years to be 218 months. This calculation is based upon the record of his travel movements provided by Customs New Zealand.
- [17] The Ministry states that there is no evidence to show that the appellant falls within any of the provisions in the Act or the Social Security Act 1964 which would allow the appellant's time out of New Zealand to count towards the residency requirements.

The case for the appellant

- [18] The appellant failed to focus his appeal and his arguments in support on the relevant law. He commented on the process of the Benefits Review Committee and the way the Ministry dealt with his application for portable NZS. Despite the Authority directing him to focus on the relevant facts and circumstances at the time that the decision on his entitlement was made, he failed to provide a logical basis for his disagreement with the decision. He has not disputed the Customs New Zealand records of his time in the country.
- [19] In his Notice of Appeal the appellant stated that he wants:
- i. An apology from the Ministry of Social Development for the way in which the reduction of his NZS was notified to him and their failure to provide him with documents showing the error they made in 2016. As the Authority has no jurisdiction to order an apology, this ground has not been considered.
 - ii. An independent review by the Authority of his case for the United Kingdom Reciprocity Agreement being applied to his portable pension calculation. However, the Reciprocity Agreement applies only to persons living in New Zealand who have been resident in the UK. Once a person who has become entitled to NZS under the Reciprocity Agreement leaves New Zealand, they lose their

entitlement to NZS. Therefore this Agreement is not relevant to the appellant's situation.

- iii. The overpayment established by the Ministry extinguished. As this occurred prior to the hearing, it is not a matter that the Authority has addressed.

Discussion

[20] The appellant has not identified any aspect of the relevant law which supports his appeal. He has not provided any evidence that indicates the Ministry made an error in its calculation of the time he has spent in New Zealand.

[21] We have applied the relevant law to the undisputed facts of this case and conclude that the rate at which the Ministry calculated the appellant's entitlement to portable NZS on 18 April 2018 is correct. Therefore this appeal fails.

Order

[22] The appeal is dismissed.

Dated at Wellington this 1st day of May 2019

S Pezaro
Deputy Chair

K Williams
Member

C Joe
Member