

[2018] NZSSAA 30

Reference No. SSAA 155/16

**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**

**S Pezaro** - Deputy Chair

**C Joe** - Member

**Hearing** at Auckland on 16 May 2018

### **Appearances**

The appellant in person

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

## **DECISION**

### **Background**

- [1] XXXX (the appellant) appeals the decision of the Ministry, upheld by the Benefits Review Committee, to suspend his New Zealand superannuation (NZS) from 12 August 2015.
- [2] The appellant was born in the United Kingdom and came to New Zealand in June 1994. He was granted NZS on 26 August 2012 when he turned 65. On 24 August 2012, the Ministry wrote to the appellant advising him that he was required to test his entitlement to a benefit or pension from the United Kingdom. The appellant subsequently confirmed that he had sent completed application forms direct to the United Kingdom Pension Service (UKPS). The Ministry asked the appellant to notify it of the decision.
- [3] It appears that the Ministry did not follow up on the appellant's application for a United Kingdom pension until September 2014 when the appellant's wife

applied for NZS. At this time, the Ministry again asked the appellant about his United Kingdom pension. He stated that he had not received a response. The Ministry asked him to complete another application form.

[4] On 25 September 2014, the appellant confirmed that he had submitted a claim for a United Kingdom pension as advised and received a letter in return. However, he said that he was not prepared to provide a copy of the letter to the Ministry because he considered it to be a private matter. He also declined to sign an information release form.

[5] The Ministry continued making attempts to establish whether the appellant was in receipt of a United Kingdom pension and, if so, the amount of that pension. On 12 June 2015, the Ministry wrote to the appellant stating that it could not accept a copy of a cover letter from the UKPS he submitted as evidence of whether or not he received a United Kingdom pension, and that he was required to verify the payments.

[6] The Ministry extended the date for the appellant to provide this information and on 9 July 2015 the Ministry received a letter from the appellant.<sup>1</sup> He stated that he would provide a certified copy of the cover letter from the UKPS confirming that he had applied for a pension. The appellant argued that any spouse, partner or dependent was entitled to keep further information private and consequently he would not supply any information about what he received.

[7] The final paragraph of this letter stated:

Finally, can you please refrain from using the patronising and offensive phrase "we are here to help" as the penultimate sentence in your letters to me. It is very apparent to me that your only interest in my affairs is to use your institutional might help (sic) *your* self to my pension.

[8] He attached a certified copy of the cover letter from the UKPS confirming that his claim was being dealt with and they were sending back to him his birth certificate and marriage or civil partnership certificate. The appellant noted in his letter that, after the document was certified, he had redacted two items, being the reference number for his application and the name of the person dealing with his claim. His actions invalidate the certification of the document

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<sup>1</sup> Exhibit 21 in the Section 12K Report.

as a true copy however, for the reasons that follow, this document has no bearing on the outcome.

- [9] On 22 July 2015, the Ministry advised the appellant that his NZS would be suspended from 12 August 2015 because it had not received the completed application forms for a United Kingdom pension. The Ministry stated that his NZS would be resumed when he provided a completed United Kingdom pension application.
- [10] The issue that we must decide is whether the appellant was entitled to NZS from 12 August 2015.

### **Relevant law**

- [11] Section 70(1) of the Social Security Act 1964 (the Act) requires overseas pensions or benefits that meet certain criteria to be deducted from any NZS entitlement:

#### **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:

- [12] Section 69G(1) of the Act requires every applicant for NZS and their partner or spouse to take reasonable steps to obtain any overseas pension to which they may be entitled. Section 69G(3) empowers the Chief Executive to give written notice requiring an applicant to take reasonable steps and s 69G(4) provides that the Chief Executive may refuse to grant or suspend a benefit until the required information is provided.
- [13] Pursuant to s 69G(5) a benefit which has been suspended under s 69G(4) may be terminated 40 days after the suspension.

#### **The case for the appellant**

- [14] We have read the submissions that the appellant filed with his appeal. They are critical of the scheme under s 70 of the Act and the role of the Ministry in implementing the Act.
- [15] At the hearing, the appellant maintained his position that he was not required to provide any information other than the cover letter of his application for a United Kingdom pension. He said he did not want to tell the Authority or the Ministry what United Kingdom pension he received because it was his business. Despite the fact that he brought this appeal because he wants his NZS reinstated, he said:

I don't have to tell them anything. They don't have to pay me. I don't have an issue about it.

- [16] When we put it to the appellant that if he was not receiving a United Kingdom pension he would be unlikely to decline to provide the required information, he did not respond.
- [17] The difficulty for the Authority in getting information from the appellant and his reluctance to participate in these proceedings is evident in the Directions issued prior to this hearing. The appellant did not attend any of the pre-hearing conferences and was granted repeated requests to adjourn conferences and the hearing. At the hearing, he reiterated the reasons for these adjournments; these were considered at the time.

- [18] The appellant also objected to contact by the case manager, refused to return messages, and failed to confirm that he would attend this hearing. When the case manager attempted to contact the appellant by telephone, his calls went unanswered and messages left on his voice mail were not returned. The appellant declined to provide an email address. He stated at the hearing that he did not like to answer phone calls from WINZ and did not want to give his email address which had changed.
- [19] The appellant argued that s 69G of the Act did not give the Ministry a right to suspend his pension and said that according to the International Labour Organisation he was entitled to keep his payments.
- [20] He objected to the fact that his NZS had been terminated and referred to s 69I of the Act which requires the Chief Executive to take all reasonable to assist any person to comply with their obligations under s 69G. The appellant stated he was not given the appropriate form and that he should have been told that his NZS would be stopped and not just suspended; the fact that it had stopped meant he now needed to reapply.
- [21] In his Notice of Appeal, the appellant asked for confirmation that he would not have to repay any overpayment if he disclosed the amount of any United Kingdom pension he is receiving.
- [22] This is not an issue for this appeal as there has been no decision to establish an overpayment. The Ministry cannot consider whether there has been any overpayment until the amount of the appellant's entitlement to a United Kingdom pension is established. It is clear from the appellant's written submissions that he is aware that by failing to disclose the amount of his United Kingdom pension he avoids a decision on whether there has been any overpayment of his NZS.

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

- [23] The Ministry submits that its decision to suspend the appellant's NZS was correct because he failed to carry out his obligations under s 69G to take reasonable steps to obtain an overseas pension. While the appellant argues that he has done so and has made the application, clearly this section must be read with s 70 of the Act which states that any person entitled to an overseas pension has their NZS reduced by the amount of the overseas pension.

[24] Ms Siueva said that the appellant failed to provide the nature of the assistance provided to him and the amount of his United Kingdom pension despite repeated opportunities given to him to do so. She referred to letters sent to him on 8 September 2014, 20 October 2014, 24 October 2014 and 12 June 2015 before his NZS was suspended in July 2015.

### **Summary**

[25] The inescapable conclusion is that the appellant has failed to comply with the obligations that must be performed before he is entitled to NZS. Despite being given an opportunity to provide the required information in support of his appeal, he has failed to do so.

[26] We are satisfied that he was given adequate opportunity to do so during the three years between the Ministry informing him of his obligations in 2012 and the date on which his NZS was suspended.

[27] Accordingly, we are satisfied that the decision to suspend the appellant's NZS from 12 August 2015 was correct.

**Dated at Wellington** this 15th day of June 2018

**S Pezaro**  
Deputy Chair

**C Joe JP**  
Member