

[2018] NZSSAA 41

Reference No. SSAA 158/17

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

**AND**

**IN THE MATTER** of an appeal by **XXXX** and **XXXX** of **XXXX** 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 31 May and 24 July 2018

### **Appearances**

XXXX; her daughter XXXX

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

L Li, Court appointed interpreter

## **DECISION**

### **Procedural background**

- [1] The first hearing of this appeal was adjourned as the appellant and her daughter were concerned that the interpreter was not accurately translating. This meant that the second hearing began as a new hearing. XXXX did not attend either hearing as he was in China.

**Factual background**

- [2] XXXX and her husband XXXX (the appellants) are immigrants from China. They each receive a Chinese pension. This appeal concerns the effect of their Chinese pensions on their entitlement to social assistance in New Zealand. The Ministry treats these Chinese pensions as income for the purpose of assessing entitlement to income-tested benefits. The Chinese pensions have not been assessed as falling within s 70 of the Social Security Act 1964 (the Act) which requires overseas pensions that meet certain criteria to be deducted from New Zealand Superannuation (NZS).
- [3] XXXX came to New Zealand in 2001 but her husband did not arrive in New Zealand until 2012. They were granted residency that year and sickness benefit. At that time, the appellants declared Chinese pensions at the rate of RMB 4280 for XXXX and RMB 3035 for XXXX, approximately NZD 325 per week. The Ministry charged this amount as income against their sickness benefit. XXXX and XXXX appealed that decision. In October 2013, the Authority found that the Chinese pensions were income for the purposes of the Act and dismissed that appeal.<sup>1</sup>
- [4] From 16 December 2013 XXXX was granted NZS. She applied to include XXXX in her NZS entitlement as a non-qualifying spouse (NQS) because he did not meet the residency requirements to qualify for NZS in his own right. In February 2014, when XXXX completed a personal details form, she declared that her pension was RMB 570 per month, approximately NZD 26. The Ministry accepted her declaration and assessed the appellants' income as being below the threshold for deduction.
- [5] The Ministry cannot locate its records of the information it received at that time about XXXX's pension, nor can it locate the declaration forms the appellants completed for the following two years.
- [6] In December 2016, a WINZ case manager realised that XXXX's Chinese pension had not been included as income charged against the appellants' NZS and supplementary assistance entitlement for the previous three years. Once XXXX's pension was included, the appellants were no longer entitled to Temporary Additional Support (TAS) as they had no deficiency in income.

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<sup>1</sup> Decision [2013] NZSSAA 85.

- [7] The Ministry then undertook the review which has led to this appeal and sought further information about the appellants' income and proof of their current pension payments.
- [8] When the information requested was not provided, the Ministry suspended the supplementary allowances for Accommodation Supplement (AS), Disability Allowance (DA) and TAS.

### **The issues in this appeal**

- [9] The appellants appeal the following decisions which were upheld by a Benefits Review Committee:
- (a) The decision of 14 March 2017 to suspend the appellants' payments of NZS and supplementary allowances for AS, DA and TAS effective from 22 March 2017.
  - (b) The decision of 16 May 2017 to resume NZS only for XXXX from 13 May 2017.
  - (c) The decision to continue suspension of the NZS payments for XXXX and supplementary payments for AS, DA, and TAS until the appellants provide the Ministry with the information it has requested.
- [10] After the appeal was filed, the Ministry reinstated XXXX's NZS payments as of 22 March 2017 on the basis that her NZS entitlement was not income tested. As a result, she received an arrears payment of \$2,242.82 for the period from 22 March 2017 to 16 May 2017.
- [11] There was also an issue as to whether the appellants owned property in China. However, in its report the Ministry confirms that it is satisfied that this property is no longer a consideration for the purpose of assessing the appellants' entitlement to AS or TAS.
- [12] The remaining issues for the Authority to determine are:
- (a) Whether XXXX was entitled to NZS from 22 March 2017.

- (b) Whether the appellants were entitled to supplementary payments for AS, DA, and TAS from 22 March 2017.

**Relevant law**

- [13] Section 81(1) of the Act provides that:

The chief executive may from time to time review any benefit in order to ascertain—

(a) whether the beneficiary remains entitled to receive it; or

(b) whether the beneficiary may not be, or may not have been, entitled to receive that benefit or the rate of benefit that is or was payable to the beneficiary—

and for that purpose may require the beneficiary or his or her spouse or partner to provide any information or to answer any relevant question orally or in writing, and in the manner specified by the chief executive. If the beneficiary or his or her spouse or partner fails to comply with such a requirement within such reasonable period as the chief executive specifies, the chief executive may suspend, terminate, or vary the rate of benefit from such date as the chief executive determines.

- [14] In accordance with s 12(2) of the New Zealand Superannuation and Retirement Income Act 2001 (NZSRI), a person who is entitled to NZS whose partner or spouse is not entitled to receive NZS may elect to receive NZS at the rate set in Schedule 1, clause 2, subject to Income Test 3.

- [15] Income is defined in the s 3 of the Act as:

**income**, in relation to any person,—

(a) means any money received or the value in money's worth of any interest acquired, before income tax, by the person which is not capital (except as hereinafter set out); and

(b) includes, whether capital or not and as calculated before the deduction (where applicable) of income tax, any periodical payments made, and the value of any credits or services provided periodically, from any source for income-related purposes and used by the person for income-related purposes; ...

- [16] In accordance with the Act, a person's entitlement to AS, DA and TAS is dependent on income assessments based on the relevant formulae. AS and

TAS also require an assessment of the cash assets, as defined by regulations, available to the person.<sup>2</sup>

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

- [17] It is appropriate to set out the Ministry's case before the appellants, as the Ministry's position is that the appellants have not provided the appropriate information and the appellants respond with their reasons.
- [18] The Ministry submits that as the only documentation it holds showing the amount of the appellants' Chinese pension is dated 5 September 2012, and there was a discrepancy between this information and subsequent information provided, it was reasonable to conduct a review of entitlement in 2017.
- [19] Ms Siueva provided the dates on which the Ministry made repeated requests for information from the appellants about their Chinese pensions, assets and income. She said that XXXX repeatedly stated that the information on the source of their cash assets was a private matter and she would not disclose this information to the Ministry.
- [20] Ms Siueva said that the Ministry accepts that the appellants' payments dropped significantly when their benefits were suspended. However, she submits that it was reasonable to suspend the appellants' AS and DA, and XXXX's NZS, when they failed to provide the information required on their Chinese pensions and other income and assets to reassess their entitlement to assistance.

### **The appellants' case**

- [21] In addition to appealing the Ministry's decisions, the appellants seek a formal apology from the manager and case manager at the XXXX office and \$5,000 compensation each.
- [22] There is a limited provision in s 12O of the Act for the Authority to award costs where an appeal succeeds. The Authority has no jurisdiction to order a party to apologise or pay compensation or general damages.
- [23] For these reasons, we have not considered the appellants' claims for compensation and a formal apology.

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<sup>2</sup> Section 12K report at [4.4]–[4.12].

- [24] The appellants state that they are suffering hardship. They see the suspension of the supplementary allowances as the Ministry avoiding responsibility and placing obstacles in their way.
- [25] The appellants argue that because NZS is not income tested their Chinese pensions should not affect their entitlement. They made no submissions on the law relating to income or asset testing and ignored the finding in 2013 that their Chinese pensions fall within the definition of income in the Act.
- [26] The appellants did not acknowledge the requirement in the Act for income testing to assess eligibility for supplementary assistance or NZS for a non-qualifying spouse like XXXX. Their arguments focused on s 70 of the Act which is not relevant to their appeal.

*The appellants' evidence*

- [27] In the directions adjourning the first hearing, we recorded that the decision we must make is whether the appellants were entitled to benefits and allowances that were income and asset tested at the relevant time. These decisions were made on the evidence before the Authority and in accordance with the relevant law. We directed that:

If the appellants want to provide any further information such as bank statements, authorised translations of documents showing the amount of their Chinese pensions, or any other evidence of income or assets at the time that the decisions which are under appeal were made, these documents are to be filed in the Authority by 22 June 2018.

- [28] The only additional documents that the appellants filed before the second hearing were an incomplete copy of one of their pension documents that was in the Ministry's report, printouts from Ministry websites referring to overseas pensions, a policy paper from the University of Auckland on the deduction of overseas pensions from NZS, and a Ministry client event note which was also in the Ministry's report.
- [29] During an adjournment, XXXX obtained a transaction history from the Bank of New Zealand (BNZ) relating to her term investments.
- [30] In evidence, XXXX accepted that the document dated 5 September 2012 at page 99 of the Ministry's report correctly recorded the amount of her Chinese

pension as RMB 4280 per month. She said that this amount included a supplement of RMB 2980 for living expenses. She also accepted that page 101, which is a translation of page 102, correctly recorded the amount of XXXX's Chinese pension as RMB 3035.90 per month, also on 5 September 2012.

- [31] XXXX, the appellants' daughter, also gave evidence. She challenged the accuracy of the translation of the Chinese pension documents. She asked why the original documents were hard to read when her mother had provided clear copies. XXXX said that although the translations at pages 99 and 101 looked like her writing, she now could not remember if she had written them. However, as XXXX confirmed the amount of each pension was correct on the documents, we accept that these figures are correct.
- [32] XXXX accepted that she completed a Personal Details form on 11 February 2014 stating that her Chinese pension was RMB 570 per month. At that time, she provided a copy in Chinese of a document dated 5 September 2012 identical in all respects to the document referred to at [26] above, except that the amount of the pension is recorded as RMB 570. She attached a copy of a translation of this document which also records her pension as RMB 570. The translation states that she has received a retirement pension since October 2002.
- [33] We asked XXXX to explain the discrepancy between the two documents generated on the same date. She said that the RMB 570 was a Government payment included in the monthly payment of RMB 4280. She accepted that the total she received per month was RMB 4280. She had no explanation for the different amounts on these documents.
- [34] We also asked XXXX why she had completed a form stating that her Chinese pension was RMB 570 rather than the full amount. She said that she did not know that she had to put the total on the form. On subsequent forms, XXXX stated that her Chinese pension was "the same" but she did not provide an amount.
- [35] On 11 January 2017, the appellants submitted a Confirming Your Circumstances form as part of a review of their entitlement. They did not state the amount of their Chinese pensions and the Ministry decided that it did not

have enough information to assess their current correct entitlement. It asked the appellants to verify the current amount of their Chinese pensions.

- [36] This information was not received and on 14 March 2017 the Ministry wrote stating that the appellants' NZS, AS and DA had been stopped. As recorded, XXXX's NZS has been reinstated as it is not income tested.
- [37] In evidence, XXXX stated that she could not get confirmation from China of the amount of their pensions. She said that it was not possible to get a record of the amount of their Chinese pensions more than once; she was adamant that as she had obtained the records in 2012 it was not possible to obtain any further information from the Chinese pension service. She also stated that even though XXXX has been in China for some months, and she had been there since the Ministry requested this information, it was not possible for them to obtain any records.
- [38] We do not accept this evidence as credible. It is extremely unlikely that any organisation managing such a pension scheme does not allow beneficiaries of that scheme to access their personal information. Even if this was the case, the appellants could have confirmed the amount of the pension they receive by producing bank statements showing the amount deposited.
- [39] In 2017, the appellants sought the assistance of their local MP. When he wrote to the Ministry to support the appellants' application for AS, DA and TAS, he attached records of two term deposits to his email. The total invested in XXXX's name was \$114,982.64. As these benefits are income and asset tested, the Ministry declined the appellants' application for supplementary assistance, based on the amount of the cash assets.
- [40] XXXX gave evidence about the source of these deposits which were each invested with BNZ for five month terms. She initially said that she could not give any information on the source of the loan which was borrowed from China to buy a house in New Zealand. XXXX said that as house prices rose, they could not afford to purchase a house. She later said that they borrowed money from friends but remained adamant that she could not provide any information to verify the source of these funds.
- [41] XXXX said the BNZ transaction history was evidence that in November 2017 she returned these funds to friends in China.

- [42] We do not accept that these funds were either borrowed or provided by friends. On 4 November 2016, XXXX declared on a TAS re-application form “Money borrowed overseas to buy property but price too high now, can’t afford”. She did not state the amount borrowed. XXXX’s reference to borrowing on this TAS form indicates that the appellants held these funds from this date at the earliest.
- [43] Then, in 2017, XXXX invested the two term deposits for five months with instructions to add interest to the principal amount at the end of the term, and reinvest the principal. The principal amount was reinvested at the end of that term, although the subsequent term was broken. In our view, retaining funds indefinitely on term deposit is not consistent with borrowing from friends.
- [44] Further, we do not accept the BNZ transaction history as evidence of anything other than the two term deposits being terminated and the funds withdrawn from that account. These funds may have been transferred to another entity or to another account in the appellants’ name. There is no credible evidence confirming what happened to the money that was on term deposit.
- [45] Even if we did accept that the two term deposits were not the appellants’ cash assets from November 2017, that date is outside the period relevant to this appeal.

### **Conclusions**

- [46] It should have been obvious to the appellants that the outcome of their first appeal meant that they could no longer argue that their Chinese pensions should not be taken into account when assessing their entitlement to income-tested benefits. From this point of view alone, the appellants pursued an appeal which lacked any merit.
- [47] Their argument that information on their finances is a private matter also lacks any merit. Any beneficiary receiving assistance under the Act must expect to comply with requests to review their entitlement and, when asked to do so, must provide any information that is reasonably required.
- [48] We are satisfied that the 2017 review was reasonable given the time that had passed since the appellants had provided verified information on their income and assets. The information requested was relevant and reasonable and, when

the appellants declined to provide that information, the suspension of their benefits was inevitable.

[49] In the course of this hearing, XXXX confirmed the level of her and XXXX's pension as at 5 September 2012. We accepted this evidence as it was the only evidence she gave which was supported by documentation. This evidence justified the Ministry's decision to suspend TAS payments but, in fact, the appellants did not directly challenge this decision in evidence.

[50] However, XXXX's oral evidence was inconsistent and we are not satisfied that the Chinese pensions continue to be paid at the same rate in 2017. Even if they are, the appellants are obliged to complete the review as requested by the Ministry.

[51] If the appellants wish to reapply for the benefits they previously received, they will need to provide evidence of their current Chinese pension payments and declare and verify their income and asset position.

**Order**

[52] The appeal is dismissed.

**Dated at Wellington** this 14th day of August 2018

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**S Pezaro**  
Deputy Chair

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**K Williams**  
Member