

[2018] NZSSAA 55

Reference No. SSA 025/18

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

Mr G Pearson - Chairperson

Mr K Williams - Member

Mr C Joe - Member

Appearances

For the Appellant: No appearance

For Chief Executive of the Ministry of Social Development: Mr R Signal

DECISION

Background

[1] This appeal concerns two decisions to establish and recover overpayments of New Zealand Superannuation:

[1.1] the first is an overpayment of \$790.30 to the male appellant; and

[1.2] the second is an overpayment of \$790.16 to the female appellant.

[2] The context is that the male appellant is entitled to New Zealand Superannuation at the married, non-qualified partner rate. His partner, the female appellant, does not qualify due to her age. Income levels affect the rate of New Zealand Superannuation in circumstances like these. The appellant had income, and, to the extent that adjustments are not made during the year to reduce New Zealand Superannuation payments to take account of the income, overpayments will occur.

- [3] The notice of appeal says it appeals the establishment and recovery of the overpayment, but, only gives reasons related to the recovery. There are four grounds:
- [3.1] The Ministry was at fault for not establishing the debt by 26 November 2016.
- [3.2] The Ministry was at fault for agreeing that allowing for an income of \$8,000 would cover the quantum of income that affected entitlement.
- [3.3] The overpayments were received in good faith, and recovery will result in hardship.
- [3.4] The male appellant made every effort to correct the income figures.
- [4] In short, the appellant says it was the Ministry's fault that New Zealand Superannuation was overpaid, and he and his wife should not have to pay it back.

The law

- [5] Debt recovery is mandated by s 86 of the Act. There is a non-discretionary duty to take "all reasonably practicable steps to recover a debt" in s 86(1). There is a mandatory prohibition on recovery in s 86(9A) and (9B). Their effect is that there is no recovery if:
- [5.1] there was an error on the part of the Ministry;
- [5.2] the recipient did not intentionally contribute to an error;
- [5.3] the recipient received the money in good faith;
- [5.4] the recipient changed her or his position believing themselves entitled to the payment; and
- [5.5] recovery would be inequitable.

The evidence

- [6] The appellants did not attend the hearing; despite being on notice that there were factual matters to address, and an indication from them that the main issue was communication between them and the Ministry.
- [7] We must deal with the facts on the papers in these circumstances.

Discussion*The facts*

- [8] The Ministry produced the documentary record and explained its position as:
- [8.1] The appellants were responsible for reporting their income, and could anticipate overpayments would occur if that did not happen.
- [8.2] There was a meeting on 29 November 2016 to discuss the level of income received by the appellants. The meeting concerned income received and anticipated in the 52 week period from 10 May 2016 to 8 May 2017.
- [8.3] The meeting necessarily related to income already received and estimation of income that may be received in the future.
- [8.4] The claim that the debt should have been established on 29 November 2016 is not sensible. Any over or underpayment could only be finalised after 8 May 2017. At best, there could only be interim adjustments until the income for the 52-week period was known.
- [8.5] It was not sensible to claim that the Ministry said \$8,000 of income would ensure there was no overpayment. The income could only be determined in the future, and in fact the overpayment largely or wholly relates in income earned after 29 November 2016. It was the appellants who had knowledge of that, as the income was in fact earned.
- [8.6] Aside from establishing error on the part of an official, the appellants would need to establish they received the overpayments in good faith, believed they were entitled to them, relied on that fact, and it was equitable not to recover the overpayment.
- [9] The appellants have not provided any written material that casts doubt on the Ministry's position, and chose not to attend a hearing to provide oral evidence.
- [10] We are accordingly satisfied that there was no error on the part of the Ministry. There is no proof either appellant reported income to the Ministry, and the Ministry failed to take action. After the meeting, the appellants had a duty to report the income earned between 29 November 2016 and 8 May 2017 if they wished to have interim adjustments made. If not, they could expect to have an

overpayment and adjustment made after 8 May 2017. That is what occurred, and what the appellants should have expected to occur.

[11] The appellants have failed to provide evidence to demonstrate they did not anticipate an overpayment, that they did not expect to repay it, or that they relied on a belief it would not need to be repaid. We do not consider it inequitable that they should repay the overpayment; it is simply a standard adjustment made at the end of a 52-week period.

Decision

[12] We have set out the statutory requirements for the debt not to be recovered, they have not been met. There is no evident grounds not to establish the debt. Accordingly, the appeal is dismissed.

Dated at Wellington this 19th day of October 2018

G Pearson
Chair

Member

C Joe JP
Member