

[2019] NZSSAA 15

Reference No. SSA 136/18

IN THE MATTER of the Social Security Act 2018

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

K Williams - Member

C Joe - Member

Hearing at Auckland on 18 February 2019

Appearances

The appellant by telephone

P Suieva, agent for the Ministry of Social Development

DECISION

Background

[1] XXXX (the appellant) appeals the decision to establish and recover an alleged overpayment of \$8,447.08 of New Zealand Superannuation (NZS) for the period 1 May 2017 to 14 November 2017 when he was out of New Zealand.

[2] There is no dispute about the facts in this appeal. The appellant agrees with the record of his overseas travel and the calculation of the amount of NZS that he was paid during the relevant period. He also accepts that when he became entitled to NZS the Ministry gave him information about the requirements for receiving NZS if he left the country and the limitations on this entitlement. He also accepts that the Ministry sent notices to his Mount Eden post box asking

him to advise any change of circumstances and that he did not clear this post box very frequently.

The case for the appellant

- [3] The appellant argues that the requirement for him to pay 32 weeks of NZS is legally right but morally wrong. He says this requirement is a penalty which is “disproportionate to the crime”. He asks that the Authority grant his NZS entitlement for the first 26 weeks that he was out of the country and order recovery of only the last six weeks.
- [4] The appellant accepted that NZS can be paid to a person who is out of the country for a period of up to 26 weeks and that his absence exceeded this period. However, he argued that the exception in s 22(b) of the Act applies to him. Section 22(b) allows NZS to be paid for a period over 30 weeks if the absence is due to circumstances that were either beyond the person’s control or that could not reasonably have been foreseen before departure.
- [5] The appellant said that the circumstances beyond his control were that he was unaware of the 26-week restriction. He said if he had he known of this requirement he would have returned to New Zealand with his wife who did return within the 26-week period.
- [6] The appellant said in evidence that he had no argument with the way that WINZ had handled his situation and agreed that the Ministry has not made any error. He said any errors were mostly on his part. He is now familiar with the Act and he has been granted portability of NZS in the Cook Islands where he lives.

The case for the Ministry

- [7] Ms Suieva submitted that pursuant to s 21 of the Act a person is not entitled to NZS while absent from New Zealand unless they fall within one of the provisions in ss 22–35 of the Act. She said that in the appellant’s case the only exception which could possibly apply is s 22 but the circumstances in which he was absent were not beyond his control. The fact that the appellant said that he was living in the Cook Islands supports the Ministry’s position that there is no compelling reason to exercise the discretion available under the Act.

- [8] She said that, as the appellant intended to live in the Cook Islands when he left, he could have applied under s 31 of the Act for portable NZS. However, as he did not apply before he left, it is not possible to backdate his entitlement.
- [9] Ms Suieva said that the Ministry has no question about the appellant's honesty and accepts that he had no intention to deceive the Ministry.

Discussion

- [10] We explained to the appellant in the hearing that the overpayment is not a penalty. The amount that the Ministry says was overpaid is the amount that he was paid as NZS during the relevant period; no additional 'penalty' has been applied.
- [11] While we accept that the appellant was not aware of the requirements for entitlement to NZS when out of the country, we are satisfied that he was given this information when he became entitled to NZS and again throughout the period that he was receiving NZS.
- [12] A failure to know the requirements in this situation is not a circumstance which is beyond the appellant's control. The appellant must have known that there were certain obligations to be met to maintain his continued entitlement to NZS and he had a responsibility to make himself aware of them. In his circumstances, there is no discretion to grant entitlement to NZS during the period between 1 May 2017 and 14 November 2017. As a result this appeal does not succeed.

Order

- [13] The appeal is dismissed.
- [14] The appellant has been overpaid NZS in the amount of \$8,447.08 and the Ministry of Social Development is entitled to recover this sum.

Dated at Wellington this 18th day of March 2019

S Pezaro
Deputy Chair

K Williams
Member

C Joe
Member

SSA136-18.doc(jeh)