

(2024) NZSSAA 01

Reference No. SSAA 33/23

**IN THE MATTER** of the Social Security Act 2018

AND

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

## **BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY**

**R Palu** Chairperson

**J Ryall** (Member)

**Date of hearing:** 2 November 2023

**Appearances:** C Marks and L King, counsel, and XXXX  
E Holmes, counsel, and N Lim-Kwan, counsel, for the Ministry of  
Social Development

**Decision:** 30 January 2024

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### **Decision**

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#### **Introduction**

1. XXXX is originally from Russia. She and her husband have lived in New Zealand for approximately 30 years. Since June 2019 XXXX has received New Zealand Superannuation (NZS). At the time XXXX also received a Russian age pension (Russian pension). Since her NZS commenced, her entitlement to NZS has been reduced by the amount of her Russian pension.
2. XXXX accepts that her Russian pension, when received, should be deducted from her NZS. However, Since April 2022, as a consequence of the Russian invasion of Ukraine, related sanctions, and the suspension of Russian pension payments

by the Russian Government, XXXX has not received her Russian pension. As pensioners, this is having an acute effect on XXXX and her husband.

3. This appeal concerns the Ministry's decision to continue the direct deduction of XXXX's Russian pension in this situation. The Ministry's decision was reviewed and upheld by a Benefits Review Committee (BRC).

### **Background**

4. It is useful to set out the background to the payment and subsequent suspension of XXXX's Russian pension, confirmed and agreed by the parties.<sup>1</sup>
5. Prior to April 2022 XXXX's Russian pension was paid into her New Zealand bank account from Russian bank, SberBank.
6. In response to the Russian invasion of Ukraine in February 2022, New Zealand alongside other countries adopted sanctions against Russia via the Russian Sanctions Regulations 2022.<sup>2</sup> While these Regulations allow for some payments, such as pension payments, to be received from sanctioned banks, the Russian banks are also prohibited from using the International Money Transfer System, SWIFT, to transfer money overseas.<sup>3</sup> This prohibition applied to Sberbank from 30 May 2022.
7. In response to the restrictions the Russian Government issued Decree No. 757 on 26 April 2022, formerly suspending all Russian pensions paid overseas. Under the Decree a person's Russian pension is suspended unless they have made a successful application for reinstatement. Such an application requires a Russian bank account which their pension can be paid into.
8. In August 2022 Decree No. 1483 replaced and restated the position in Decree 757. It also allowed an application for reinstatement of a suspended Russian pension to a bank account outside of Russia which could accept a transfer in roubles.
9. In March 2023, the Russian Government issued Decree No. 493 which applies indefinitely. This restates the position in Decree No. 1483 and confirms that pension entitlements are suspended by law unless and until the bank account

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<sup>1</sup> Agreed Statement of Facts 29 September 2023.

<sup>2</sup> The Russian Sanctions Regulations 2022 came into force on 18 March 2022. Regulation 10 prevents New Zealanders from dealing with an asset that is owned or controlled by a sanctioned person. Regulation 11 prohibits New Zealand from dealing with a service that is provided by a sanctioned person. Sberbank is a sanctioned person under Schedule 2 of the Regulations.

<sup>3</sup> From 12 March 2022 most Russian banks were prohibited from using the SWIFT service to send payments to any other bank or institution in the world.

condition is met, or 'restrictive measures of an economic nature' which prevent the transfer of payments outside of Russia are lifted. In such event Russian pension payments would be restarted and backdated.

10. XXXX and her husband are unable to open a bank account in Russia. It is agreed that even if XXXX was able to do so, there is no ability for Sberbank or other Russian banks to transfer money to New Zealand. As a consequence, XXXX's Russian pension has been suspended since April 2022.
11. As already stated, the Ministry has continued to deduct XXXX's Russian pension from her NZS. The deduction is made under ss 187 to 189 of the Social Security Act 2018 (the Act).
12. XXXX and her husband receive NZS paid at the couple rate. Both have their Russian pensions deducted from their NZS. The amount deducted depends on the value of the rouble. The average amount deducted from XXXX's NZS as at June 2023 was \$47.30 per fortnight. (A sum of \$60.06 was deducted from [her husband]'s NZS per fortnight.)

#### **Case for the appellant**

13. For XXXX it is submitted that the Ministry's interpretation of the words "entitled to receive or receive" in s 188 is unduly broad, inconsistent with the plain words and scheme and purpose of the Act and the New Zealand Superannuation and Retirement Income Act 2001 (NZSRIA), and contrary to well accepted principles of statutory interpretation. It is submitted that the overall effect expands the power to make deductions beyond what Parliament could have intended, resulting in a decision which lacks common sense and humanity.
14. Ms Marks contends that a modern purposive approach and the application of well accepted principles of statutory interpretation, require a narrower interpretation of s 188. The correct interpretative approach submitted for XXXX is summarised as follows:
  - 14.1 As a starting point the text is to be considered in light of its purpose and context.<sup>4</sup>
  - 14.2 The following accepted principles of statutory interpretation are also relevant:

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<sup>4</sup> Legislation Act 2019, s 10(1).

- (a) When the matter directly impacts on a person's rights and interests, as in XXXX's case, a generous and fair approach should be taken.<sup>5</sup>
- (b) In relation to benefit legislation, the Court has explicitly held that the Ministry should be 'proactive in seeing to welfare, and not defensive or bureaucratic'.<sup>6</sup>
- (c) In the end the questions will be best determined by the application of common principles of humanity and common sense;<sup>7</sup>
- (d) Courts 'must strive to find a construction which reconciles any apparent inconsistency and allows two statutory provisions to stand together'.<sup>8</sup>

14.3 The plain meaning of the words "entitled" and "receive" in the phrase "entitled to receive or receives" in s 188 of the Act, indicate entitled to receive something in fact (not in theory.)

14.4 The title to s 188 and words that precede the phrase "entitled to receive or receives", "a person affected by receipt of an overseas pension", further point to a Parliamentary intent of actual receipt and/or entitlement to actual receipt.

15. Further, it is submitted that an interpretation that requires an entitlement to receive actual payment:

15.1 is supported by the broader scheme of the Act, which is concerned with 'receipt' of a pension. Ms Mark's referred to: the obligations requiring a person to take reasonable steps to obtain an overseas pension and the consequences of failing to do so, in ss 108, 173, 174 and 176 of the Act; the provisions which enable an alternative arrangement in s 190; and the reduction formula and calculation rate provided for in the Social Security Regulations 2018; and

15.2 is consistent with the purpose of the direct deduction policy, which is to prevent 'double-dipping' and ensure equitable treatment of pensioners,<sup>9</sup> the purpose of the Act, and the NZSRIA, which is to provide basic rights to

<sup>5</sup> See for example *Lalli v Attorney-General* [2009] NZAR 720 (HC) at [6], where Asher J notes that high standards of fairness are required in refugee cases because 'fundamental questions of liberty are at stake'.

<sup>6</sup> *Hall v Director-General of Social Welfare* [1997] NZFLR 902 (HC) at 912.

<sup>7</sup> *Auckland Area Health Board v Attorney-General* [1993] 1 NZLR 235 (HC) at 247.

<sup>8</sup> *Terranova Homes and Care Ltd v Fitalia* [2013] NZCA 435, [2013] ERNZ 347 at [26].

<sup>9</sup> *SSAA 151/16* [2017] NZSSAA 037 at [28]; *SSAA 80/16* [2016] NZSSAA 110 at [18]; *McKeogh v Attorney-General* [2020] NZHRRT 39, (2020) 12 HRNZ 289 at [102].

pensioners through consistent and stable provision across those who are entitled.

16. Consequently, the correct approach interprets “entitled to receive” as requiring an entitlement to receive actual payment, not hypothetically.
17. Against this interpretation, it is submitted that XXXX’s situation does not come within s 188. XXXX currently has no ability to receive her Russian pension. Further, the suspension of pensions for persons in XXXX’s situation is in place for an indefinite period and what will happen in the future is speculative and uncertain.

### **Case for the Ministry**

18. The Ministry is sympathetic to XXXX’s position. However, it considers that XXXX remains eligible to receive an overseas pension and it is required to directly deduct her Russian pension from her NZS.
19. In the Ministry’s submission, although XXXX’s Russian pension payment has been paused while the disruptions are in place, the Russian Government continues to consider that those in XXXX’s position are “entitled” to payment, and it intends to backdate Russian pensions when payments outside of Russia recommence in the future.
20. In the Ministry’s view, entitlement is also supported by the fact that XXXX could access the Russian pension if she was in Russia or had a Russian bank account, notwithstanding her current inability to access it. In the Ministry’s submission this is an issue of “accessibility”, which is not the same as “eligibility”.
21. In interpreting s 188, the Ministry submits that inclusion of the alternative “entitled to receive” in addition to “receives” captures a person who is entitled to receive an overseas pension but is not receiving it. In the Ministry’s view this covers the situation where there is entitlement without the ability to receive it.
22. The Ministry contends that this interpretation is also consistent with the general purpose of the Act to ensure that financial support is provided to people taking into account that, where appropriate, they should use the resources available to them before seeking financial support under the Act.<sup>10</sup>
23. Consequently, in the Ministry’s submission, XXXX is a person “entitled to receive” a Russian pension, as that phrase is defined in s 188 of the Act.

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<sup>10</sup> Social Security Act 2018, s 3(c)(i).

24. The Ministry maintains that it is required by s 189 to continue reduction of XXXX's New Zealand benefit by the amount of the overseas pension as determined by the Ministry under regulations made under s 434.
25. The Ministry accepts that it is unlikely that "entitled to receive" is intended to capture the situation that has arisen where clients through no fault of their own are restricted from accessing their payments. However, in the Ministry's view, that appears to be an unfortunate consequence of the legislative drafting. The Act provides no discretion to the Ministry to take other circumstances into account to enable it not to deduct the pension under s 189.

### **Issue**

26. The central issue in this appeal concerns whether XXXX remains "entitled to receive" an overseas pension, as provided for under s 188 of the Act.

### **Relevant Legislation**

#### *The Act's purpose and principles*

27. The purposes of the Act are set out in s 3. Relevant to this appeal the purposes include:
- (a) To enable the provision of financial and other support as appropriate—  
...
  - (b) to enable in certain circumstances the provision of financial support to people to help alleviate hardship:
  - (c) to ensure that the financial support referred to in paragraphs (a) and (b) is provided to people taking into account—
    - (i) that, where appropriate, they should use the resources available to them before seeking financial support under this act; and
    - (ii) any financial support that they are eligible for or already receive, otherwise than under this Act, from publicly funded sources:  
...
28. Section 4 provides general principles that every person exercising a duty, function or power under the Act must have regard to. The provision includes the following principle:
- (d) People for whom work is not appropriate should be supported in accordance with the Act.

#### *Reduction of benefit due to overseas pension*

29. The direct deduction provisions in the Act provide a mechanism for assessing the amount of New Zealand benefit payable to people who are eligible for both a New Zealand benefit and a state-administered pension from another country.
30. Part 3 of the Act imposes obligations on those who may be eligible to an overseas pension. This requires beneficiaries to take all reasonable steps to obtain an overseas pension, where they “may be entitled” to an overseas pension.<sup>11</sup> The penalty for failing to do so is suspension of the New Zealand benefit.<sup>12</sup>
31. Once entitlement to an overseas pension is confirmed, the matter is then the subject of Part 4 which sets out factors that may affect or reduce a benefit. In Subpart 2 of Part 4, ss 187 to 191 cover the situation where a benefit is reduced due to an overseas pension.
32. The provisions provide for two methods of reducing a benefit where a person is entitled to receive a New Zealand benefit and an overseas pension, the default method and an alternative arrangement (known as the special banking option).
33. The default method is for the person's New Zealand benefit to be reduced by the amount of the overseas pension. This is the method applied in XXXX's case. This method is set out in ss 187 to 189. (The alternative arrangement applies to specified overseas pensions which are received by the overseas pensioner.<sup>13</sup> It does not apply to Russian pensions and does not apply to XXXX.)
34. Section 187 defines an “overseas pension”.
35. Section 188 defines a “person affected by the receipt of an overseas pension”. Relevant to this appeal s 188 provides:

**188 Persons affected by receipt of overseas pension**

A person (P) is a person affected by the receipt of an overseas pension if P is a person who is qualified to receive a benefit under the NZ benefits legislation and –

- (a) P is entitled to receive or receives an overseas pension in respect of any of the following persons:
    - (i) P:  
...
36. Section 189 provides that the rate of a benefit paid to a person affected by the receipt of an overseas pension must be reduced by the amount of the overseas

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<sup>11</sup> Social Security Act 2018, s 173.

<sup>12</sup> Social Security Act 2018, s 176.

<sup>13</sup> Social Security Regulations 2018, reg 133.

pension as determined by the Ministry under regulations made under section 434.

37. The Social Security Regulations 2018 (the Regulations) are made pursuant to s 434 of the Act.
38. Part 4 of the Regulations provides for factors affecting benefits. Subpart 3 (regs 118 to 123) deal with the effect of an entitlement to an overseas pension. Subpart 4 (regs 124 to 128) deal with overseas pension deductions. This subpart includes the reduction formula (reg 125), calculation rate (effectively the exchange rate) (reg 126) for the default method under s 189 of the Act.
39. For regs 119 to 123, reg 118 provides that a “person affected by the receipt of an overseas pension” has the same meaning as in s 188.
40. The NZSRIA continues current entitlement to NZS,<sup>14</sup> a scheme designed to provide a basic income on retirement for all residents over the age of 65 who meet the residence criteria. It sets out who is entitled to receive NZS.

### Discussion

41. There is no dispute that the Russian pension meets the characteristics of an “overseas pension”. The contentious issue in this appeal concerns the interpretation of s 188 of the Act. It is whether, within the context of the applicable legislation, “entitled to receive” a pension requires entitlement to actual receipt.

#### *Statutory interpretation – general approach*

42. Orthodox principles of statutory interpretation require the meaning of the legislation to be ascertained from its text and in the light of its purpose and context.<sup>15</sup>
43. The High Court has referred to adopting a “generous and unniggardly” interpretation.<sup>16</sup>
44. In *Brosnahan v Chief Executive of the Ministry of Social Development*, Kos J confirmed the relevance of this approach for social policy legislation:

[33] I do not think that interpretative approach should be confined to that Act, as if it were *sui generis*. In my respectful opinion it is applicable to social policy legislation

<sup>14</sup> New Zealand Superannuation and Retirement Income Act 2001, s 3(a).

<sup>15</sup> Legislation Act 2019, s 10(1).

<sup>16</sup> *Beneficiary AP v Chief Executive of Ministry of Social Development* [2019] NZHC 2208 at [8]; *Brosnahan v Chief Executive of the Ministry of Social Development* [2013] NZHC 2618 at [32]; and *McKeefry v Accident Compensation Corporation* [2019] NZHC 612 at [7].



generally. The reason for that is obvious. In a context such as the present Act, Parliament is dealing with the expectations of the poor and disadvantaged. Small individual sums of money may have very significant personal consequences. Where those expectations are the fair and reasonable product of statutory language, and are consistent with the overall statutory purpose, they are not, I think, to be read down except by language of the clearest kind. Lines of exclusion in a welfare context need to be drawn clearly.

45. Ultimately, a “generous and unniggardly” approach involves interpreting the text of the enactment in light of its purpose in the usual way.<sup>17</sup>

*The statutory scheme and purpose*

46. It is useful to consider the purpose of the direct deduction provisions, the specific purpose of s 188 and the Act’s broader purposes expressed in s 3.
47. As a starting point, the general purpose of NZS is to assure qualifying New Zealand residents a basic standard of living in their retirement.<sup>18</sup>
48. The direct deduction policy has been in place in New Zealand since 1938. The rationale for the direct deduction policy is to ensure that all qualifying New Zealand residents, including those who have spent all their working lives in New Zealand and those who have lived overseas for a proportion of their life, receive an equitable level of state administered pension, whether the amount of that pension is fully funded by New Zealand, partially funded by New Zealand and another country, or fully funded by another country.<sup>19</sup> The policy ensures that someone who is entitled to payment from a scheme run by an overseas country should not be advantaged over a person who has spent all of their life in New Zealand. The policy also helps to reduce funds required to support NZS.
49. We agree with the submission made on behalf of XXXX that the direct deduction policy and provisions of the Act work to ensure that a person receives a total amount equivalent to NZS, but no more, and no less, than their New Zealand benefit entitlement.
50. The purpose of s 188 within the context of the deduction provisions is to define ‘a person affected by the receipt of an overseas pension’. As stated above such a person’s New Zealand benefit is to be reduced by an overseas pension under s 189.

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<sup>17</sup> *Brosnahan v Chief Executive of the Ministry of Social Development* as above at [33]; *Beneficiary AP v Chief Executive of Ministry of Social Development* as above at [9]; and *McKeefry v Accident Compensation Corporation* as above at [8].

<sup>18</sup> *McKeogh v Attorney General* as above n9, at [35].

<sup>19</sup> *McKeogh v Attorney General* as above n9, at [43]; *SSA 80/16* as above n9, at [18]; *SSA 151/16* as above n9, at [28].

51. It is also necessary to consider the background to ss 187 to 189 of the Act. These provisions were previously covered by s 70(1) of the Social Security Act 1964. The 2018 Act rearranged, rewrote and replaced the 1964 Act to achieve better coherence and consistency. Although there have been a number of significant discrete changes to the specific provisions, the provisions of the 2018 Act in rewritten form are intended to have the same effects as the corresponding provisions in the 1964 Act.<sup>20</sup> Where the meaning of a provision in the Act is unclear or gives rise to absurdity, the wording of the law in the repealed 1964 Act that corresponds to the new law under the Act must be used to ascertain the meaning of the new law.
52. The phrase “a person affected by receipt of an overseas pension” in ss 188 and 189 was not included in the 1964 Act. However, in our view, this wording reflects the overall purpose of the direct deduction provisions, which are concerned with those affected by the receipt of an overseas pension.
53. In terms of the more general broader purposes of the Act in s 3, the social welfare regime is set up to support people in XXXX’s situation.<sup>21</sup> There are also limits to assistance. The purposes in s 3 provide that, where appropriate, alternative sources of income available to each beneficiary must be exhausted before resort is made to the social security system.<sup>22</sup> The scheme of the Act balances these general purposes.
54. Against that background and the context of s 188 set out above, we approach the text of the provision.

#### *Section 188*

55. The Ministry submits that s 188 is clearly drafted and the use of the word “or” instead of “and” in the phrase “entitled to receive or receives”, captures the situation where a person is entitled to receive an overseas pension, and the alternative situation where a person receives an overseas pension. The Ministry contends that an alternative interpretation that requires an entitlement to actual receipt is not available.
56. In the Ministry’s submission this interpretation is consistent with the ordinary use of the word “entitled”, which does not require receipt in fact.

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<sup>20</sup> Social Security Act 2018, s 9(3).

<sup>21</sup> Social Security Act 2018, s 3(a)(i).

<sup>22</sup> Social Security Act 2018, s 3(c)(i).

57. In the Ministry's submission if Parliament intended the direct deduction policy to only apply once a person factually "received" an overseas pension, the legislation would have been clearly drafted to reflect that.
58. In support of its position, the Ministry referred to this Authority's decision in *SSAA 32/16*.<sup>23</sup> In *SSAA 32/16* the Authority referred to s 70(1) of the 1964 Act, the comparative provision to s 188 in the 2018 Act, and stated:
- "[22] It is entirely unsurprising that s 70(1) is triggered both where a person in fact receives a pension (without having to be satisfied they had a legal entitlement), and where a person is entitled to a pension even if they have not received it. There is nothing in the words that suggest their function or effect is to create a discretionary power as to when deductions will be made against New Zealand Superannuation. On the contrary, s 70(1) has the mandatory word "shall"; that demands that New Zealand Superannuation will be reduced if either condition exists."
59. This decision concerned when the exchange rate used for calculating the deduction should be applied and whether an overseas pension could be deducted when it was paid, instead of when each NZS instalment was made. The Authority found that the alternatives in s 188 were not related to the timing of the deductions of an overseas pension but concerned when the requirement to deduct was triggered.<sup>24</sup> The decision did not address or comprehensively consider when the deduction requirement was triggered and the decision has limited application to interpretation of s 188 in the situation presented here.
60. While the Ministry contends that another interpretation is prohibited by the wording of s 188, we agree with the submissions made for XXXX, that an interpretation that there is entitlement to receive actual payment is reasonably available and is consistent with the language in s 188.
61. The phrase "entitled to receive" uses both the words "entitled" and "receive", not just the word 'entitled'. Both parties have provided consistent definitions for the word "entitled", which refers to a legal right to or qualify for, receive or possess something.<sup>25</sup> Although not addressed by the Ministry, "receive" means "to be given, presented with, or paid".<sup>26</sup> In our view, the plain meaning of both words allow an understanding that the entitlement will be received.
62. It is also necessary to consider the purpose or point of the phrase "entitled to receive" as an alternative to "received", within s 188.

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<sup>23</sup> [2018] NZSSAA 24.

<sup>24</sup> [2018] NZSSAA 24, at [20].

<sup>25</sup> Bryan A Garner (ed) *Black's Law Dictionary* (10th ed, West, St Paul, United States of America, 2009) at 649; and *Oxford English Dictionary* (online ed, Oxford University Press, 2023) at "entitled".

<sup>26</sup> Catherine Soanes and Angus Stevenson (ed) *Concise Oxford English Dictionary* (11th ed, Oxford University Press, Oxford, 2008) at 1199.

63. As Ms Marks pointed out, “entitled to receive” in s 188 addresses the situation where people may have little incentive to obtain overseas pensions, a concern also addressed in s 173. This covers the situation where a person is entitled to an overseas pension but for a variety of reasons the person may have chosen not to receive it or not to receive it directly. Ms Marks submitted the reasons could include a decision not to claim the overseas pension, a decision to have it placed into a trust or other account or have it paid to the Ministry directly under the special banking option.
64. Such a purpose is compatible with examples given by the Ministry when entitlement without receipt can occur, which were temporary situations when overseas pension applications were being processed, or when someone is completely unaware they could be eligible for an overseas pension and receive it years later. In the latter, deduction of the overseas pension is unlikely to be considered until entitlement to an overseas pension is established.
65. Overall, we consider that the phrase “entitled to receive” is intended to operate where a person is entitled to receive an overseas pension but does not access their entitlement due to circumstances of their choosing or within their control, or where entitlement has been confirmed and actual receipt is imminent. In other words where there is entitlement to actual receipt. This is a different situation to one where a person is not able to receive their overseas pension entitlement due to reasons well beyond their control, as is the situation in this case.
66. Such an interpretation is consistent with the Regulations made under s 434 of the Act which contemplate the actual receipt of an overseas pension, and prescribe the mechanics of receipt of that pension, the deduction from the New Zealand benefit, and payment to the beneficiary.
67. This interpretation is also consistent with the overall purpose of the direct deduction provisions, which stop a beneficiary from receiving more than their entitlement by deducting the amount of an overseas pension from a person who is affected by receipt of an overseas pension, and the more general purposes in the Act, which are all aimed at actual receipt.
68. Although the Ministry contends that a broader interpretation which encompasses all who are entitled to an overseas pension, is consistent with the broader purposes of the Act, the broader purposes of the Act concern the provision of financial support where appropriate and require people to use resources available to them, where that is appropriate. In the situation where ongoing support is required to meet a basic standard of living, and a person’s entitlement to other financial support is not available to them due to reasons outside their control, it is

not possible or appropriate for a person to use these resources, or appropriate to reduce support.

69. Consequently, in circumstances where, as we have found, the provision does not preclude an interpretation that includes entitlement to actual receipt, a purposive approach requires such an interpretation in the circumstances that we have identified.

*Does s 188 apply to XXXX's situation?*

70. The Ministry's position essentially relies on the declared commitment to a future lump sum back payment of XXXX's current entitlement to her Russian pension. In our view, the Ministry's contention that XXXX remains entitled to receive her Russian pension in that situation, places too much focus on eligibility or "entitlement".
71. XXXX's situation is one where there is entitlement to an overseas pension but no ability to receive it. The actual receipt of entitlement is well beyond XXXX's control and is also uncertain. In such case XXXX cannot be said to be "entitled to receive". In reaching this conclusion we note that it is not appropriate for us to extend our consideration beyond the situation in this case into other circumstances that are not before us.
72. It may be that the position will change when a date for payment and/or a back payment can be ascertained. When that occurs, the Ministry has the power to review XXXX's entitlement under s 304 of the Act. The Ministry's ability to review, would also address any concern around XXXX receiving more than a person who has spent all of their life in New Zealand.
73. We acknowledge that any back payment of Russian pension would equate to an overpayment. XXXX has expressed a willingness to enter into an arrangement where her pension is remitted to the Ministry. However, such an arrangement is not possible for the reasons identified above.
74. While the Ministry considers that inclusion of XXXX's situation is an unfortunate consequence of the drafting, for the reasons discussed above, we are of the view that a purposive approach excludes her situation.

*Conclusion*

75. Taking a purposive approach, the words "entitled to receive" in s 188 require an entitlement to actually receive and exclude those circumstances where a person is unable to receive their entitlement due to reasons well beyond their

control. Such an interpretation is consistent with the statutory language and the overall scheme of the provisions and the statutory purposes.

76. As XXXX is not able to receive her Russian pension due to reasons well beyond her control, she is not a person affected by the receipt of an overseas pension as that term is defined in s 188.

### **Decision**

77. The appeal is allowed. XXXX is entitled to unabated NZS from the time she stopped receiving her Russian pension.
78. Leave is reserved for either party to apply for directions regarding any incidental matters necessary to fully resolve the appeal.

### **Costs**

79. The Authority may allow the appellant the costs of bringing all or part of the appeal when an appeal is allowed, either in whole or in part, or if the matter is referred back to the Ministry.<sup>27</sup>
80. Unless costs are resolved by agreement:
- (a) XXXX is to file information on any costs incurred in bringing this appeal within 15 working days of the date of this decision.
  - (b) The Ministry is to provide any response within ten working days of receipt of any cost information filed for XXXX.
  - (c) The parties may seek to vary the timetable by agreement by email addressed to the case manager.

**Dated at Wellington** this 30<sup>th</sup> day of January 2024

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**R. Palu**  
Chairperson

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**J. Ryall**  
Member

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<sup>27</sup> Social Security Regulations 2018, reg 255.