

[2019] NZSSAA 4

Reference No. SSAA 88/18

IN THE MATTER of the Social Security Act 2018

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

C Joe - Member

Hearing at Auckland on 16 January 2019

Appearances

XXXX by telephone

P Siveva for the Ministry of Social Development

DECISION

Background

[1] XXXX and XXXX (the appellants) receive New Zealand Superannuation (NZS) in Australia on a portable basis. They appeal the decision by the Chief Executive, upheld by a Benefits Review Committee, to establish and seek recovery of an overpayment of \$394.17 each for NZS payments between 11 December 2017 and 9 January 2018.

[2] The Ministry pays the appellant's NZS entitlement in accordance with the Social Welfare (Reciprocity with Australia) Order 2002 (the agreement). Under the terms of the agreement, the appellants are entitled to the lesser of the notional or proportional rate of NZS. The overpayments were the result of a reassessment by Centrelink of the appellants' entitlement at the Australian rate of superannuation which is based on an income and assets test. Centrelink's assessment determines the rate at which portable NZS is payable.

The case for the appellant

- [3] The appellant states that he and his wife are being penalised because Centrelink belatedly reviewed the assets and income of their trust. He said that they were aware that they would be means and asset tested and had offered to produce trust records before but were told by Centrelink that it was necessary to do so.
- [4] The appellant says that Centrelink made an administrative error and he and his wife are not at fault. He says they have complied with all requirements and since 2012 have produced a full set of trust accounts. They should not be asked to repay anything.

The case for the Ministry

- [5] The Ministry states that it has correctly based the payments of NZS on the information provided by Centrelink. Each time Centrelink reviews the notional rate, the Ministry is required to review the rate of NZS payable. Ms Siueva stated that for the period from 18 September 2017 to 10 December 2017 the Ministry assessed the appellants as being underpaid and therefore paid them arrears.
- [6] The Ministry submits that as there has been no error, s 86(9A) of the Social Security Act 1964 does not apply.¹ This section provides that the Chief Executive may not recover a debt which is caused wholly or partly by an error to which the debtor did not intentionally contribute if certain circumstances are met.

Conclusion

- [7] It is clear that the appellant did not contribute to the situation which gave rise to the overpayments. However, neither did the Ministry. The mechanism for paying NZS as a portable arrangement to New Zealanders residing in Australia will often result in a retrospective adjustment by the Ministry of the rate of NZS if Centrelink reassess entitlement or the notional Australian rate changes. This is a situation that people in the same situation as the appellants must accept if they want to take advantage of portable NZS payments.
- [8] The Ministry clearly has no ability to influence the decisions of Centrelink or the manner in which it reviews entitlement from time to time.
- [9] We are satisfied that the Ministry is entitled to recover the overpayments.

¹ Section 444(2)(b)(i) of Social Security Act 2018.

Order

[10] The appeal is dismissed.

[11] The appellants are each to pay the Ministry of Social Development the sum of \$394.05.

Dated at Wellington this 23rd day of January 2019

S Pezaro
Deputy Chair

K Williams
Member

C Joe
Member