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## How MSD/WINZ cheat Pensioners and deprives them of their voluntary part of the Overseas Pension. (Freiwillige AHV/ AVS Facultative)

As we all know, voluntary contributions, to overseas government pension schemes (such as contributions to the so called Swiss "voluntary OASI scheme" / "freiwillige AHV" / AVS facultative) are no longer deducted from the superannuation by the New Zealand authorities, following a decision by the Social Security Appeal Authority (SSAA) on an appeal by a Swiss citizen back in 2005. This ruling came into effect immediately.

Unfortunately, over the last 15 years the Ministry of Social Development (MSD) has not always been following this ruling.

*The following Article was put together by my German colleague (Sissi Stein) who is also fighting the same cause and we exchange information on a regular basis. I have her full permission to reproduce excerpts out of her article:*

It has been brought to my attention that the Ministry of Social Development (MSD) is failing in its obligation to NOT deduct the voluntary part of compulsory overseas pensions from NZ Super. I had thought it was common knowledge and practice that the percentage of an overseas pension that was funded by voluntary contributions would not be deducted from NZ Super. I also know of various pensioners where this is the case, and for many years I have advised others to make sure that the voluntary part of their overseas pensions must not be deducted.

While this is not written law (yet), MSD has been directed by the Social Security Appeal Authority (SSAA) in a case in 2005 to excise its discretion to defer the deduction of the voluntary portion of an overseas pension from NZ Super. In a report from August 2018 the Ombudsman reported that **"the Ministry subsequently began exercising this discretion routinely when specifically requested by an applicant, but did not take active steps to make all applicants for superannuation aware of the existence of this discretion".**

As I have been informed by a pensioner that he has never been informed about this discretion and that his entire overseas pension has been deducted from NZ Super until today, there is reason to believe that many others who have made

voluntary contributions to their overseas pension scheme have been treated in the same way. To hide the truth is outright theft, and it does not matter if it has happened because WINZ/MSD staff are just not well trained, as I have encountered on many occasions.

Therefore, if you have funded a portion of your overseas pension by making voluntary contributions but MSD have deducted the entire amount, contact your overseas pension provider and get

a confirmation about which part of your pension is based on employer/employee-funded contributions and which part you have funded voluntarily. Then contact MSD and apply for a reassessment of your deductions (which are already a rip-off anyway), demand a back-payment, interest and compensation for the stress caused by the unjustified appropriation of your money.

To not deduct the portion of an overseas pension which is derived from voluntary

## Ombudsman

Fairness for all

Case note



## Ex-gratia payment for superannuitant in receipt of overseas pension

### Legislation

Ombudsmen Act 1975

### Agency

Ministry of Social Development

### Ombudsman

Chief Ombudsman Peter

### Case number(s)

Boshier 429683

### Date

August 2018

*Request by superannuitant for ex-gratia payment for deduction of voluntary component of overseas pension from New Zealand superannuation – Ministry of Social Development failed to advise superannuitant of discretion to defer commencement of deduction of voluntary component of overseas pension – Ombudsman recommended ex-gratia payment in recognition of time and effort by complainant in seeking back-payment, and further delay by MSD in making back-payment*

## Background

The complainant was a New Zealand superannuitant who had lived in the United Kingdom (U.K.) and had made voluntary payments into the U.K.'s state pension system, which were over and above the compulsory contributions required by law in the U.K.

When the complainant started receiving New Zealand superannuation in 2009, the Ministry of Social Development deducted the full value of his U.K. pension from his New Zealand superannuation, including the portion that he had funded voluntarily. This was as required by New Zealand law. However, in 2014, the complainant heard through word of mouth that the Ministry was able to defer the deduction of the portion of his U.K. pension that had been funded by voluntary contributions.<sup>1</sup> In other words, he could keep that part of his U.K. pension. The complainant therefore asked the Ministry to exercise this discretion. The Ministry stopped deducting the voluntary portion of his U.K. pension from that time. The Ministry also later paid

<sup>1</sup> At the time, this discretion was contained in section 70(2) of the Social Security Act 1964. The relevant law is now contained in sections 187 – 191 of the Social Security Act 2018, and clause 121 of the Social Security Regulations 2018.

contributions is one of the policy changes that are planned to become law on 1 July 2020.

But as the Ministry has had the discretion to apply this rule for many, many years, it is unacceptable that it has obviously not been applied by default, but only when someone knew about it, requested it specifically or complained about the injustice.

I can confirm that the voluntary part of

the overseas pensions should NOT have been deducted from NZ Super since 2005 when the SSAA directed the MSD to defer the deduction of the portion of an overseas pension that has been funded by voluntary contributions.

There is no such rule as 2005 (when the decision by the Social Security Appeal Authority was made) plus 10 years. When the SSAA rules something, it applies immediately, as they hear individual cases and the decisions are final – well,

as final as can be if a complainant or the MSD don't appeal it at the High Court. If you look at SSAA rulings, the time between a hearing and the ruling is rather short.

To me it was absolutely clear that the MSD partially followed this ruling and therefore told numerous pensioners that this was the case, the more astounded I was when I heard that MSD usually don't apply the discretion if not specifically asked for it.

**If you are affected by the non-disclosure of common practice, and have been cheated partially or completely by the MSD/WINZ get active. Contact the Swiss Compensation Office in Geneva and ask them to hand out a confirmation about which part of your pension is based on employer/employee-funded contributions and which part you have funded voluntarily back as far as 2005 if necessary.**

Peter Ehrler  
Elected Council Member of the Swiss Abroad, representing New Zealand

*This case note is published under the authority of the Ombudsman Rules 1989. It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*

Note: The complainant in this case received over NZ\$ 45,000 from MSD.

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him two lump sum payments, which totalled over \$40,000, in recognition of the value of the voluntary portion of his U.K. pension which the Ministry had deducted over a number of years previously.

The complainant believed he had still been financially disadvantaged, and sought interest on the value of his back-payment. When he complained to the Ombudsman, an investigator sought to resolve the issue informally with the Ministry. This resulted in an additional offer by the Ministry of an ex-gratia payment of \$3,000. The complainant was not satisfied that this was sufficient recognition of the loss he had suffered as a result of the deductions to his superannuation over a number of years.

## Investigation

The Ombudsman notified an investigation into the adequacy of the ex-gratia payment offered to the complainant by the Ministry.

The Ombudsman considered the circumstances surrounding the back-payments to the complainant, and the extent to which the Ministry was responsible for the complainant's loss of the voluntary portion of his U.K. pension. He noted that in 2005 in another case, the Social Security Appeal Authority had directed the Ministry to exercise its discretion to defer the commencement of the deduction of the voluntary portion of an overseas pension from the person's New Zealand superannuation. The Ministry subsequently began exercising this discretion routinely when specifically requested by an applicant, but did not take active steps to make all applicants for superannuation aware of the existence of this discretion.

When the complainant applied for New Zealand superannuation in 2009, the Ombudsman observed that Ministry staff should have been aware of and trained in the Ministry's discretion to defer deductions of the voluntary portions of an overseas pension, and should have advised the complainant accordingly. However, it did not. As such, the Ombudsman considered that the complainant's loss was due to an administrative error by the Ministry, and warranted recognition via an ex-gratia payment. The Ombudsman also noted that the Ministry should have made a greater effort to identify and inform people in the same position as the complainant, of the existence of its discretion to defer deductions.

The Ombudsman considered that the time and effort required by the complainant in seeking the back-payment, and an unacceptable delay by the Ministry in processing the arrears payment, meant that the Ministry's offer of a \$3,000 ex-gratia payment was inadequate.

## Outcome

The Chief Ombudsman formed the final opinion that the offer of a \$3,000 ex-gratia payment was unreasonable because it did not sufficiently recognise the financial loss, stress and inconvenience suffered by the complainant and recommended an additional payment of \$2,000. The Ministry accepted this recommendation.

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