



11 October 2024

Tēnā koe

Official Information Act request

Thank you for your email of 24 September 2024, requesting information about the Swiss Insurance Scheme and the Social Security Act.

I have considered your request under the Official Information Act 1982 (the Act). Please find my decision on each part of your request set out below.

Please provide me a copy of all information that the MSD relies on to assess the Swiss Insurance Scheme.

Please find attached the following three documents which are used by the Ministry of Social Development (the Ministry) to assess the Swiss Insurance Scheme:

- An appeal against a decision of a Benefits Review Committee [2019] NZSSAA 38 (23 July 2019)
- Direct Deduction Testing Switzerland
- New Zealand Legislation Social Security Act (SSA) 2018

The Ministry currently relies on the Social Security Appeal Authority (SSAA) decision in NZSSAA [2019] 38 – interpreting deductibility of Swiss OASI pensions under old section 70 of the SSA 1964, now covered by sections 187 to 191 of the SSA 2018.

Section 9 of the Social Security Act 2018 allows interpretation of the previous legislation (and case law) to be used to interpret the new sections where they are a rewriting of the old 1964 Act.

Please provide me a copy of the unredacted confidential report that the Ministry of Social Development issued on 06 November 2017 addressed to the Hon Carmel Sepuloni, Minister for Social Development and Hon Tracey Martin, Minister for Seniors, which has since been released under the Official Information Act.

On 3 October 2024 and 7 October 2024, I contacted you to request further information regarding which report you are referring to. Without a title of the report, we have been unable to locate the report you are seeking. As such, your request is refused under section 18(e) of the Act, as despite reasonable efforts, we are unable to locate it.

If you are able to send through the title of this report, we will process this as a new Official Information Act request.

Please provide me with a copy of the Social Security Appeal Authority decision (ref no: SSA 046/04).

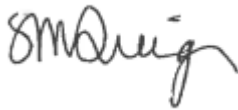
This decision is available online, here: www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZSSAA/2004/46.html?query=046/04

I will be publishing this decision letter, with your personal details deleted, on the Ministry's website in due course.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with my decision on your request, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui

pp. 

Magnus O'Neill
General Manager
Ministerial and Executive Services

New Zealand Legislation

Social Security Act 2018

If you need more information about this Act, please contact the administering agency: **Ministry of Social Development**

- Warning: [Some amendments have not yet been incorporated](#)

9 Interpretation: references to old law, and using it as a guide

- (1) A reference in an enactment or a document to the following former enactments or to a provision of them, is to be interpreted as a reference to this Act, or to the corresponding provision of this Act, to the extent necessary to reflect sensibly the intent of the enactment or document:
 - (a) the [Social Security Act 1964](#) (except [sections 69FA](#) and [132D](#), [Part 4](#), and [Schedules 27](#) and [30](#), which are provisions rewritten and replaced by the [Residential Care and Disability Support Services Act 2018](#));
 - (b) the [Social Welfare \(Reciprocity Agreements, and New Zealand Artificial Limb Service\) Act 1990](#) (except [Part 3](#) and [Schedule 3](#), which are provisions rewritten and replaced by the [Artificial Limb Service Act 2018](#)).
- (2) Subsection (1) is subject to the consequential amendments in [Schedule 10](#).
- (3) The provisions of this Act—
 - (a) are the provisions of those former enactments in rewritten form; and
 - (b) are intended to have the same effect as the corresponding provisions of those former enactments.
- (4) Subsection (3) is subject to subsections (5) and (6) and [section 11](#).
- (5) If the meaning of a provision of this Act that comes into force under [section 2](#) (the **new law**) is unclear or gives rise to absurdity, the wording of a law that is repealed by [section 455](#) or [456](#) and that corresponds to the new law (the **old law**) must be used to ascertain the meaning of the new law.
- (6) Subsections (3) to (5) do not apply—
 - (a) to a new law listed in [Schedule 11](#) (identified changes in legislation); or
 - (b) if a new law is affected by an amendment made after the new law's commencement under section 2, to that new law after the amendment commences.

Compare: 2007 No 97 s [ZA 3\(2\)](#), (3), (4), (5)



Switzerland

Non-reciprocal country

Agreement made: n/a

**Page last updated:
31/10/2018**

Overseas Agency Contact

Swiss Compensation Office

Schweizerische Ausgleichskasse SAK
Avenue Edmond-Vaucher 18
Postfach 3100
1211 Genève 2
SWITZERLAND

sedmaster@zas.admin.ch

Testing Criteria

OLD AGE PENSION (EIDGENOESSISCHE ALTERS/ALTERSRENTEN) (AHV/AVS)

A client must meet the following criteria to qualify for the Old Age Pension in New Zealand:

- Men: be at least 65 years of age; or
- Women: be at least 64 years of age; and
- have at least 12 months of contributions from the age of 21; or
- have lived in Switzerland with their spouse who was gainfully employed and paid at least double the minimum contributions for at least 12 months; or
- have at least one bonus year for childbearing or caring.

Note: Only those people who are Swiss citizens, citizens of other European Union countries, or citizens of countries with which Switzerland has entered into a social security agreement with can receive a pension whilst living overseas. All others can

apply for a reimbursement of their contributions. This does not mean they need to be residing in the country, just that they must be a citizen to receive ongoing rather than a lump sum payment.

[Link to a list of countries which have a Social Security Agreement with Switzerland](#)

WIDOW'S/WIDOWER'S PENSION (WITWENRENTE/WITWERRENTE)

A client must meet the following criteria to qualify for the Widow's/Widower's in New Zealand:

- the deceased contributed to the Old Age and Survivors Insurance/Disability Insurance scheme for at least 12 months; or
- the deceased was insured and their spouse paid at least double the minimum contributions for 12 months; or
- the deceased had at least one bonus year for childrearing or caring; and
- women:
 - was married to the deceased at the time of death; and
 - have had at least one dependent child when she became a widow; or
 - be at least 45 years of age and have been married for at least 5 years when her spouse died; or
 - was divorced from the deceased at the time of death; and
 - have at least one dependent child and the marriage lasted at least 10 years; or
 - be older than 45 years of age at the time of divorce and the marriage lasted at least 10 years; or
 - be older than 45 years of age and the youngest common child is 18 years of age
- men:
 - have at least one child under the age of 18 with the deceased person; and
 - be less than 65 years of age

Note: If a person remarries, their entitlement to a widow's/widower's pension ceases.

Note: When a person meets the conditions to be granted a widow's/widower's pension and an old-age or disability pension at the same time, the higher pension will be paid.

ORPHAN'S PENSION (WAISENRENTE) (AHV/AHS)

A child must meet the following criteria to qualify for the Orphan's Pension in New Zealand:

- the deceased contributed to the Old Age and Survivors Insurance/Disability Insurance scheme for at least 12 months; or
 - the deceased was insured and their spouse paid at least double the minimum contribution for 12 months; or
 - the deceased had at least one bonus year for childrearing or caring; and
 - one or both parents must have died; and
 - be less than 18 years of age; or
 - be less than 25 years of age if studying or in an apprenticeship
-

DISABILITY INSURANCE/INVALIDITY PENSION (INVALIDENVERSICHERUNG/DIE INVALIDENRENTEN)

The client must meet the following criteria to qualify for the Disability Pension in New Zealand:

- be at least 18 years of age; and
- be less than old age pension age; and
- have paid at least three years to the Old Age and Survivors Insurance/Disability Insurance scheme before the invalidity; and
- have an incapacity of at least 50% that prevents them from undertaking gainful employment; and
- the incapacity must be considered long term for more than one year; and
- application should be made six months from the end of employment due to the disability, invalidity or illness.

Note: When a person reaches the age for an Old Age Pension, they will need to apply for payment of the Old Age Pension. Their entitlement to an Invalidity Pension ceases.

Directly Deductible under NZ Law

Yes	No
<ul style="list-style-type: none"> • Eidgenoessische Alters (AHV/AVS) (Federal Old Age Pension) • Invalidenversicherung (AI)/Die Invalidenrenten (Disability Insurance/Invalidity Pension) • Standard (Dependent) Children's Benefit (DCB) • Waisenrente (AHV/AHS) (Orphan's Pension) • Witwenrente/Witwerrente (AHV/AVS) (Hinterlassenrenten) (Widows/Widower's Pension) 	<ul style="list-style-type: none"> • Military Insurance (MV)

External Links

[Social Security Throughout the World - Switzerland](#)

[Swiss Compensation Office](#)



Social Security Appeal Authority of New Zealand

You are here: [NZLII](#) >> [Databases](#) >> [Social Security Appeal Authority of New Zealand](#) >> [2019](#) >> [2019] NZSSAA 38

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An appeal against a decision of a Benefits Review Committee [2019] NZSSAA 38 (23 July 2019)

Last Updated: 18 May 2021

[\[2019\] NZSSAA 38](#)

Reference No. SSA 15/18

IN THE MATTER of the Social Security Act

1964

AND

IN THE MATTER of an appeal by XXXX of

Blenheim 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

Hearing at Wellington on 24 May 2019

Appearances XXXX in person

For Chief Executive of the Ministry of Social Development: Mr C J Hunt (counsel)

DECISION

Background

[1] XXXX appealed against the Chief Executive's decision to offset his Swiss pension against his New Zealand Superannuation. A person entitled to New Zealand Superannuation will have their entitlement reduced to the extent that they receive certain overseas pensions.

In this appeal, we need to decide whether XXXX's foreign pension is in a category where the New Zealand legislation requires it is offset against New Zealand Superannuation.

[2] Section 70 of the Social Security Act 1964 (the Act) governs the issue. The Social Security Act 2018 has replaced the Act, but it still applies for the period under consideration. Regardless, the respective Acts have a similar, or identical, effect for the issues in this appeal.

[3] The essential principle behind s 70 of the Act is that New Zealand taxpayers should not provide New Zealand Superannuation at a level that puts a person who is entitled to a foreign pension into a better position than a person who has remained in New Zealand through the whole of their working life. However, that relates only to entitlements from other countries that have a functional similarity to New Zealand Superannuation. The similarity is functional only, as virtually all countries have schemes to provide income for older persons that are in some respects, unique. There is typically variation in features such as funding; which, may be a tax or a participant/employer base, an individual or a collective account to fund entitlements, and the conditions for benefit entitlements also vary. Section 70 accordingly has a broader focus than those attributes. Offshore pensions are generally offset if they have a similar purpose and function to New Zealand Superannuation, the details have little significance in the analysis.

[4] There are two considerations in cases like the present case:

[4.1] The first step is to establish as a question of fact the nature of the scheme from which XXXX receives an overseas pension.

[4.2] Then as a second step, the Authority must apply s 70 and determine whether the scheme has the necessary elements of commonality with New Zealand Superannuation to require offsetting.

[5] The nature of the scheme providing the off-shore pension is a question of fact,¹ which we must decide in each case. Previous decisions can only determine questions of New Zealand law for future cases. Of course, usually, the same factual conclusions about any offshore pension scheme are reached in different cases concerning the same scheme. Nonetheless, it will turn on the evidence in each case.

¹ That includes questions of foreign law.

An overview of the pension scheme in issue

[6] As a preliminary matter, to give context to the positions taken by XXXX and the Chief Executive, we will first identify some of the essential characteristics of XXXX's pension scheme. Some of the details were contentious; to the extent they are relevant to our decision, we will consider them when evaluating XXXX's arguments. An interpreter was available to assist at the hearing. XXXX was concerned about the terminology; however, this decision does not turn on the nuances of language. There was little scope for disagreement on the essential attributes of the scheme from which XXXX receives pension payments.

[7] Generally, there was some agreement that the relevant pension scheme and XXXX's participation has the following attributes:

[7.1] XXXX receives payments of Swiss Old Age and Survivor's Insurance (Swiss OASI). It is a scheme operating in the Swiss Confederation (Switzerland), and it is subject to regulation in the three official

languages of Switzerland.

[7.2] XXXX's payments derive from a standard old-age pension, with a supplement for deferral. XXXX worked in Switzerland for part of his life, and, as a result, is entitled to the payments he receives from Swiss OASI.

[7.3] Swiss OASI is a three-pillar system. XXXX's payments are from the first pillar, which provides basic assistance with living costs. The second pillar provides post-retirement income to maintain the standard of income participants had when working. The third pillar is a voluntary, private savings scheme with tax benefits.

[7.4] Only the first pillar of the scheme applies to XXXX's payments. It applies to all persons residing or working in Switzerland; participation is mandatory. All people working in Switzerland are required to pay contributions while employed. The Central Compensation Office administers the scheme, which is the Swiss Government's central implementing body for Swiss OASI, and delivering a range of other social welfare services².

2 XXXX seemed to accept those facts but considered "administration" was something different.

XXXX' case

[8] XXXX expressed concern that due to language barriers, the Authority could misunderstand the Swiss pension system. He said that the information provided to the Authority was not accurate in all respects and likely misunderstood due to translation issues. He contended:

[8.1] He received periodic payments under the Swiss OASI. They were monthly OASI Renter payments. He said the Authority should distinguish his payments from general or universal flat-rate granted pensions. They were not a standard old-age pension.

[8.2] He said his payments were an income from an asset and were not a pension or offshore pension. The payments were contingent on membership of the scheme and a history of making contributions.

[8.3] The true character of the payments was an employer/employee funded contributory insurance retirement scheme and paid only to individuals who contributed. The payments were not government funded. The government of Switzerland did not administer the programme.

[8.4] He did accept that the contingency for his Swiss OASI was loss of revenue linked to old age.

The Chief Executive's position

[9] It is sufficient to observe that the Chief Executive's position is that the payments from the Swiss OASI are an obvious example of a pension scheme to which s 70 of the Act applies.

Discussion

Applying the Act to the facts in this case

[10] Section 70 of the Act has a plain objective. It ensures that where persons qualify for a pension in another jurisdiction, and the pension is that jurisdiction's way of providing for the same contingencies as New Zealand social security benefits, including New Zealand Superannuation, the offshore entitlement will be offset against an entitlement in New Zealand.

[11] The policy reasons are obvious. New Zealand taxpayers are not expected to expend money to provide retirement superannuation that is greater than what a New Zealand taxpayer would receive if they lived and worked for

their entire life in New Zealand. To achieve that, it is necessary to take account of pension entitlements persons may have due to spending some of their working life in other countries.

[12] Inevitably, different countries employ diverse schemes to support persons after working age. Indeed, within New Zealand, the approach has changed over time, and whether it should change further remains a recurring policy issue within New Zealand. For that reason, it is unsurprising that features such as having an individual account, or a contributions-based scheme, are not determinative when considering whether to offset foreign pensions.

[13] In terms of whether there ought to be an offset against New Zealand Superannuation in economic terms, it could not be justified to distinguish between:

[13.1] a regime where the social bargain is that tax rates are lower due to not having a broad entitlement to taxpayer-funded superannuation, but individuals are required to contribute to individual funds by compulsion; and

[13.2] the regime in New Zealand where general taxation funds entitlements to New Zealand Superannuation, based on residence and a qualifying age.

[14] Against those considerations, the policy underlying s 70 becomes obvious. The key provision in s 70 is contained in s 70(1)(b). It identifies offshore pensions that are offset against New Zealand Superannuation by identifying a:

... benefit, pension, or periodical allowance or any part of it, is in the nature of a payment which, in the opinion of the chief executive, forms part of a programme providing benefits, pensions, or periodical allowances for any of the contingencies for which benefits, pensions, or allowances may be paid under ... the New Zealand Superannuation and Retirement Income Act 2001 ... which is administered by or on behalf of the Government of the country from which the benefit, pension, or periodical allowance is received ...

[15] The key issues under the provision are whether a foreign pension scheme is for "the contingencies" for which New Zealand Superannuation (or other social welfare) is paid, and whether the payments are administered by, or made on behalf of, the government of the country in question.

[16] While XXXX asserted the Swiss OASI was not administered by the government of Switzerland, that was not consistent with the information published by the Swiss Federal Social Security Office. The Ministry of Social Development produced a publication that contains an overview of the Swiss OASI, and provides information showing the official

schemes dealing with a range of social security measures in Switzerland. It is beyond argument the Swiss OASI is a compulsory scheme where all employees in Switzerland and their employers contribute, it is an official scheme administered by the government of Switzerland.³ The payments XXXX receives are old-age pension payments. The scheme is provided under the constitution of Switzerland, and it commenced in 1925. The Swiss Federal Social Insurance Office publication describes the pension XXXX receives as a "mandatory state-run old-age pension". It also makes it clear that there is no fund accumulated by individuals as:⁴

State-run old-age insurance is based on a pay-as-you-go system, with the money collected in contributions by OASI flowing straight to the current cohort of pensioners. The funds collected are not invested.

T v Chief Executive of the Ministry of Social Development

[17] A recent decision of the High Court, *T v Chief Executive of the Ministry of Social Development*,⁵ (the Singapore pension case) reinforced the view that s 70 of the Act applies to XXXX. There are elements of commonality between the Singapore pensions case and the present case. However, XXXX is in a weaker position than the appellant in the Singapore pension case. A significant feature of the Singapore pension case was that the contributions from employees and employers are a fund that is the personal property of the employee. So, any contributions and earnings are distributed with the estate of a deceased member if not paid out in their entirety during the life of the deceased. In the present case, the essence of the argument for XXXX is that he made personal contributions and that distinguishes his pension from New Zealand Superannuation. However, the High Court found no merit in that distinction when deciding whether s 70 of the Social Security Act 1964 applies.

3. *Boljevic v Chief Executive of the Ministry of Social Development* HC Wellington CIV-2010-485-000206, Kós J at [34] identifies the only issue in this respect is state "administration", not state funding.

⁴ Federal Social Insurance Office *Switzerland's old-age insurance system*

(January 2019) at 11.

5. *T v Chief Executive of the Ministry of Social Development* [\[2017\] NZHC 711](#).

[18] In both the Singapore pension case and this case, the substance of the arguments is that the payments the recipients received as pensions were simply disbursements of their own money and that could not affect their entitlement to New Zealand Superannuation. XXXX says he contributed to an insurance scheme. Factually, that was a much stronger argument in the Singapore pension case. In Singapore, any contributions are returned to the contributor or their deceased estate, whereas in Switzerland there is no personal fund, only rights to a pension that will be funded in the future by the contributions of others. The Singapore pension scheme is in fact exceptional as a public pension scheme that strictly allocates contributions to a personal fund that, subject to certain rules, is effectively the personal property of the participant.

[19] In the Singapore pension case, if the appellant renounced his Singaporean citizenship, he could draw his funds out of his account and cease to receive a pension. In this case, XXXX did not have personal property rights of that kind. The evidence is that his employee pension is an unexceptional compulsory public pension scheme where funds are pooled, and participants are entitled to pensions that reflect their time of participation and contributions; it is funded out of current contributions, taxes and other sources at the time the pension is paid.

[20] The first point considered by the High Court in the Singapore pensions case was a contention that the Singapore scheme is similar to the voluntary KiwiSaver pension scheme. The High Court concluded that regardless of elements of commonality with KiwiSaver, s 70 does apply:⁶

The Authority considered [Mr T's] arguments. It examined the [Singapore scheme] and concluded that it is a programme put in place by the government of Singapore for the support of its citizens. It provides for one or more of the contingencies in the New Zealand income support programme, including for retirement or old age. It is administered by or on behalf of the Government of Singapore.

With respect those conclusions are inescapable.

[21] The judgment went on to note that the Singapore scheme is different from KiwiSaver in that the former is a compulsory scheme and the latter a voluntary scheme. However, the Court did not conclude that the compulsory nature of the scheme was critical.

6. *T v Chief Executive of the Ministry of Social Development* [\[2017\] NZHC 711](#) at [\[14\]](#) – [\[15\]](#).

[22] In short, the High Court had little difficulty in reaching the view that s 70 applied. While the Singapore scheme is based on individual accounts, where funds were effectively the personal property of the account holder, the scheme is nonetheless the Singapore government's regime for providing for the contingency of retirement or old age and met the other attributes to bring it within s 70. In the present case, the material facts were substantially similar to those before the High Court in the Singapore pension case. To the extent they are different, it is because the Swiss OASI lacks the feature that all contributions are the personal property of the account holder. XXXX's case is weaker than that advanced in the Singapore pension case.

[23] While the High Court did note the element of compulsion concerning whether s 70 of the Act applied, it did not elaborate on why that may be important. It appears that without compulsion, it is more difficult to establish that a fund does cover the contingencies for which pensions are provided under the New Zealand Superannuation and Retirement Income Act 2001.⁷ The case is more readily made that the contingency is to provide for something beyond the essential needs the social security regime in New Zealand provides.

[24] Compulsion may or may not be a determinative consideration. However, it is a feature that is present in this case. The Swiss OASI is simply part of a compulsory scheme applying to a wide range of workers in Switzerland, to ensure they have an income when they are of an age when they may not be in paid work. As noted, the Swiss OASI is not the only scheme.

[25] Accordingly, the Singapore pension case supports the views we have reached and summarised above.

Decision

[26] We are satisfied we must dismiss the appeal as s 70 of the Act applies to the pension XXXX receives from Switzerland.

[27] No issues were raised regarding the quantum of the offset; for completeness, we reserve leave do so.

7. *Hogan v Chief Executive of Department of Work and Income New Zealand* HC Wellington AP 49/02, 26 August 2002, at [24]-[26], contains a further review of the significance of compulsion.

Dated at Wellington this 23rd day of July 2019

G Pearson

Chairperson

K Williams

Member

C Joe JP

Member

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URL: <http://www.nzlii.org/nz/cases/NZSSAA/2019/38.html>