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Addressing Kiwi pension problems

In the last Helvetia Issue, you may remember I laid down the case of the British citizen who was cheated of his voluntary contribution and in the end the Ministry of Social Development (MSD) had to pay back \$45,000. I have since had another case brought to my attention by our former Deputy Head of the Swiss Consulate in Wellington Jürg Bono, now working in Japan.

For me it was a very pleasant surprise when I got news from Jürg that a Canadian/Kiwi couple have also fought the MSD successfully.

They had incurred a huge 'debt' due to MSD not deducting an overseas pension, despite knowing about it, and then demanding the 'over-payment' to be paid back in monthly installments. Thanks to their legal knowledge (one is a lawyer) they were able to have the debt, which amounted to \$76,000, waived.

Clearly MSD didn't have an appetite for a High Court challenge with a lawyer, rather than self-representing lay people. The couple found a clause in the regulations for the Social Security Act 2018, clause 208. The clause basically states that if MSD makes a significant mistake, they cannot claim a debt. They then sent them a long list of mistakes made throughout their process. It is worthwhile for anyone affected to make sure they get their MSD file because their processes are very flawed.

You will find the information in the document named Social Security Regulations 2018. This is the link:

www.legislation.govt.nz/regulation/public/2018/0202/14.0/whole.html#LMS96210

The title of Section 208 is:

"Debt caused wholly or partially by errors to which debtors did not intentionally contribute"

You can also find information on this under the following link:

www.nzpensionprotest.com/Home/the-law/debt-and-over-payment

The main point is that MSD cannot recover a debt that was caused wholly or partly by a significant error by themselves and to which the debtor (pensioner) didn't contribute intentionally.

If you think this has happened to you, the first thing to do is request your entire file from MSD and compare it to your records. The state of the file and its contents will give an indication right away if the MSD processes have been sloppy or not.

There are many ways in which MSD might have made mistakes and caused the situation. The most common mistakes MSD makes which lead to a lifelong debt for people with overseas pensions are;

- You have declared the overseas pension but WINZ didn't deduct it from your NZ Super, then notices it with a huge delay and asks the money back.
- MSD has not deducted your overseas pension or the correct amount because they have lost your paperwork. This happens more often than you might think.
- There has been info slippage between MSD and WINZ? Example: MSD tells you, you will receive one amount and WINZ comes up with a different figure. Miscommunication between WINZ (where you apply for NZ Super) and MSD happens frequently. We hear it

all the time from pensioners who have been given a hard time by MSD staff.

- MSD have refunded you off-the-top deductions made over a certain period and then demanded the money back
- The review contains errors of fact.

The full list on the website noted above gives you a possible framework for an appeal. It is not very difficult if you have kept your

records, as a second successful case within a short time has shown. This was also despite the fact that the appeal was made well outside the usual three month timeframe because the

affected pensioner didn't know Section 208 of the regulations any earlier.

If you are not able to work on an appeal yourself, ask a family member or friend, or, if you can afford it, hire a lawyer. Just give them the legal framework and the list of errors and this should simplify the process.

To top this all off, I just recently heard from a Swiss couple, after querying the MSD decision and threatening with a lawyer concerning a payback issue. It seems MSD did an U-turn, advising the people concerned that if they are willing not to pursue the issue any further, they will drop the case as well. If this case has any connection to the case above and the case of the UK citizen, I do not know, but it does make me think.

However, do not even think of appealing or fight against an MSD decision on the re-payment of debt or other issues, if you have lied to MSD and not declared an overseas pension in your NZ Super application!

Bad news for spousal deduction

You might recall there had been an announcement in the 2019 "Wellbeing Budget" which I reported about, that the unfair spousal deduction policy would be removed. From 1 July 2020, your NZ Super or Veteran's Pension won't be affected if your partner's getting an overseas pension.

We are talking about a policy that at most affects about 500 people. There was an appropriation in the 2019 Budget of \$2 million to fix this anomaly,

In June 2020 the bombshell arrived. Blaming Covid-19 work pressures at the MSD, the bill has been delayed until November 2020, i.e. until after the election. Worse, even if it passes, there will be no backdating to July let alone prior to that. What a contrast to Covid-19 policies that can be implemented almost overnight. I am sorry to inform you with this bad news. I hope that after the election they are going to keep word.

Peter Ehrler

Elected Council Member of the Swiss Abroad representing New Zealand