

**RETIREMENT POLICY AND RESEARCH CENTRE
PENSION FORUM**

**NEW ZEALAND SUPERANNUATION AND OVERSEAS PENSIONS: ISSUES AND
PRINCIPLES FOR REFORM**

24TH FEBRUARY, 2010

As we all know, New Zealand Superannuation is not income nor asset tested but I could not help being surprised when I read an article in the Sunday Star Times on March 14, 2004 about high profile people who were working and receiving Superannuation: Jonathan Hunt, salary \$195,000 plus Superannuation, NZ First MP Jim Peters, salary \$146,000 plus Superannuation and Cabinet Minister Jim Anderton, salary \$195,000 plus Superannuation. When these gentlemen retired, they would be entitled to their NZ Superannuation along with other Government Pensions or Pension. I want to contrast their situation with mine - I am not entitled to any other type of pension and am being denied the receipt of my full NZ Superannuation. In July 2002 when I turned 65 (to save you doing the math I will be 73 this year) I went to the WINZ office in Panmure to apply for my Superannuation and was told that because I was married to an American, I probably would not receive it. I had never heard of anyone being turned down when applying for their Superannuation.

I was truly devastated, my world began to spin and I could hardly walk out of the office and drive home. I suddenly realised that my husband and I would be more financially pressed than we had ever expected. A few days later I received a letter from WINZ stating: Yes, I would receive my Superannuation, then, two days later another letter arrived stating that I would not be getting Superannuation!

Prior to moving to the US I had worked in this county and during the time I lived in the States our children were born and I worked part time. I lived there for 19 years but did not work the required number of quarters to be eligible for Social Security from the USA. When we came to live in New Zealand I worked again until I was 65.

I was not prepared to accept the denial of my superannuation as I felt it was unfair - and so began a lot of hard work. What I also want to point out here is that the stress and strain on me in the initial stages, was considerable and my doctor was very concerned about my blood pressure as it was the first time he had seen me with such a high reading. I found cancer, a few years earlier, much easier to deal with.

Four months later I flew to an arranged appointment in Wellington to present my case to the Benefit Review Committee of WINZ - this was a complete waste of time - they forgot I was coming so they hastily had to form the Committee and then at the end of the hearing one of the members of the committee said, "Well, there is really nothing we can do". I felt the whole

exercise had been window dressing for WINZ. Not surprisingly, I subsequently received a letter from the International Services Section of WINZ to say I would not be receiving any Superannuation.

A year later, someone in the International Services Section reviewed my case, found an error had been made in their calculations and I was eligible for a portion of my Superannuation and arrears would be paid into my account.

At this point I want to point out that staff in the various WINZ offices appear to be subjective in their decisions - an acquaintance went into her local office somewhere in the South Island, told the WINZ officer that she was a New Zealander married to an American who was receiving his Pension from the States and this applicant was told that this made no difference to her as the New Zealand Pension is not means tested. This New Zealander receives her full New Zealand Pension while her husband continues to receive his Social Security from the US. Another situation of which I am aware is of a loop-hole in the system which makes it possible for a person who is entitled to US Social Security, to have it paid into an account in the US while, at the same time, allows this same person to receive NZ Superannuation here. This is possible because we do not have a Social Security Agreement with the US which might allow information sharing.

Also in late 2003, as a result of an earlier letter from the Internal Revenue Service in the US stating that when I turned 65, I would receive 50% of the amount my husband receives even though I had not taken out US Citizenship, I applied for Social Security from the US. All went well until the relevant Department realised that I lived in a country that did not have a Social Security Agreement with the US. They replied that *only US citizens are paid if the country of residence is New Zealand.* If I moved to Australia, England, Canada, or any other country which has a Social Security Agreement with the States, I would receive Social Security from the USA. I do not wish to move to any of those just countries in order to receive that pension.

At the end of 2003 I applied to the Human Rights Committee filing a complaint which cited Marital Discrimination under Part 1A of the Human Rights Act 1993 due to the fact that I was married to an American and was therefore unable to receive my full Superannuation. In effect the Ministry of Social Development was saying **You Have Married the Wrong Man - But if you get divorced you will receive your Superannuation.** Pacific Islanders who live here for only 20 years can go back to their place of origin and receive NZ Super, criminals released from jail receive their super, unemployed people when they reach 65 provided they have lived here for 20 years prior, receive their Super and so on and so on.....It is unfair that I don't receive mine.

In April 2004, The Human Rights Commission applied on my behalf to Crown Law for an opinion on my case. The opinion came back stating that Crown Law felt I was not being discriminated against. I quote: *"It is Crown Law's contention that your belief that you should*

be assessed separately from your husband, is a direct challenge to the expectation, which appears throughout the Social Security Act and other legislation, that married couples emotionally and financially support each other and therefore achieve greater 'economies of scale' than single individuals." I feel that this opinion contradicts New Zealand's retirement policy that married pensioners, once they are both over the age of 65, qualify for New Zealand Superannuation. The Human Rights Commission suggested to me that I may feel that Crown Law has relied on existing jurisprudence and traditional expectations of the support married couples give one another, rather than take into account the human rights consideration of my complaint. The Commission suggested that I may wish to take my case to the Human Rights Tribunal. I immediately made this Application and eventually received a 10 page reply explaining why they could not provide me with free legal representation. In the middle of 2007, 3 years later, I was encouraged to reapply with new information to the Tribunal. After a long meeting with one of their officers, we were led to believe that we would have very little chance of succeeding because my application fell into a new area of law and they were very limited with their available funding and also short of personnel.

I have corresponded with a number people in the Ministry of Social Development and Members of Parliament over my situation and inevitably the majority of them come back with the same phrase to support the abatement of my Superannuation: *This is so you are not placed in a better position than a couple who have lived and worked in New Zealand all their lives.*

In truth, it is persons who have lived all their lives in New Zealand who have the advantages. They can enjoy any number of supplemental superannuation schemes in addition to receiving New Zealand Superannuation in full. As an example, I have a friend who on turning 65 received three Government Funded pensions and she has lived and worked in New Zealand all her life. I am being penalised for **marrying the wrong man.**

An enquiry to the Ministry of Social Development in October 2003 revealed that *there are approximately 40 persons whose NZS is subject to spousal reduction because a pension is received from the US.* A further enquiry in May 2009 to the Ministry of Social Development reveals that *there are approximately 124 NZ Superannuitants whose payments are affected by their partner's overseas pension.*

I have never expected more than my share of the married rate of NZS - I have no other form of Pension. I am not actually looking for the back-dating of payment for the seven and a half years that I have not received my full Superannuation - I am today looking to the future and recognition of the fact that I am a New Zealand citizen who fully qualifies for Superannuation.

Thank you.

Ruth Humphrey
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