

Assets test: disposition of property

PISANO & PISANO and
SECRETARY TO DSS
(NO. W85/210)

Decided: 2 December 1986 by J.D. Davies, R.D. Nicholson and J.G. Billings.

Mr and Mrs Pisano had been in receipt of an invalid pension and a wife's pension respectively since December 1984. In November 1984 Mr Pisano had informed the DSS that he had transferred a house in which he was still living to a Company as trustee for the Pisano Family Trust 'as a gift'. In February 1985 he advised the DSS that he given five properties worth \$165 280 and earning \$354 in weekly rental to that same company. He stated that it was his intention to give the properties to his children. The beneficiaries of the trust included the applicants and their children. The directors and the shareholders of the trustee company were the applicants.

The DSS had decided to cancel the applicants' pensions on the grounds that after inclusion of an amount calculated under s.6AC of the *Social Security Act* they failed the assets test. The applicants applied to the AAT for review of that decision.

The legislation

Section 6AC(4) provides that where a married person has disposed of income on or after 1 June 1984, 50% of the amount shall be included in the income of the person and the income of their spouse.

Section 6AC(11) provides:

For the purpose of this section, a person shall be taken to have disposed of income of the person if the person

engages in a course of conduct (not being a course of conduct under which the person ceases employment or ceases to engage in a business or profession or reduces the extent to which the person is employed or the extent to which the person engages in a business or profession) that diminishes, directly or indirectly, the rate of income of the person where-

(a) the person receives no consideration, or inadequate consideration, in money or money's worth; or

(b) ...

and the amount of that disposition of income shall be taken to be the amount hat, in the opinion of the Secretary, is the annual rate of that diminution reduced by such percentage of the consideration (if any) received by the person in respect of that disposition as the Secretary determines in writing to be fair and reasonable in all circumstances

'Course of conduct'

The AAT considered that the dispositions made by the applicants came within the meaning of the words 'course of conduct' in s.6AC(11). It did not come within the exclusionary words in the brackets, nor did the fact that it was made as a gift prevent it from being so regarded (see s.6AC(11)(a)). The direct result of that course of conduct was to reduce their rate of income.

Disposition of property

Attention was also drawn at the hearing to s.6AC(8). That sub-section provides that where a person disposes of property by a course of conduct that also constitutes a disposition of income then, subject to various adjustments being made, the amount of disposition of income is to be taken into account in determining the rate of pension ('disposition of property' is defined in

sub-section 6AC(10) in similar terms to 'disposition of income').

The AAT concluded that the applicants satisfied this sub-section. The course of conduct led to the diminution of the value of the applicants' property. The disposition of property also constituted a disposition of income and therefore it was appropriate to take into account the income of the applicants from the properties in calculating their pensions. -

Suspension more appropriate

It was submitted by the DSS that cancellation rather than suspension of pension was the administrative step taken where a person is unlikely to qualify within a reasonable time.

The AAT observed that having regard to s.6AC(3), which allows for a 10% annual depreciation of the value of the property disposed of by a pensioner when calculating his/her assets, it was likely that the applicants would become entitled to the pension within a reasonable time. Also the applicants told the Tribunal that their hard work since emigrating to Australia did not justify cancellation and they would not reapply for the pensions. In those circumstances the AAT considered that suspension and not cancellation was the appropriate step to take.

Formal decision

The Tribunal set aside the decision under review and decided that the payment of the applicants' pensions be suspended until the application of the provisions of s.6AC permits the payment of the pensions to them.

Unemployment benefit: student

PERAZA and SECRETARY TO
DSS
(No. N/584)

Decided: 29 September 1986 by R.A. Hayes, G.P. Nicholls and M.T. Lewis.

Eugenio Peraza's unemployment benefit had been cancelled under s.135TJ of the *Social Security Act* on the grounds that he was not unemployed and that he had not taken reasonable steps to obtain work as required by s.107(1)(c) of the Act. He applied to the AAT for review of that decision.

The facts

Peraza had been in receipt of unemployment benefit when he commenced a course of study in electronics at a technical college. The DSS decided that he had a greater commitment to study than to obtain work and therefore failed the work test in s.107(1)(c). Benefit was stopped two days before the applicant gave up the

course at the end of the first semester in August 1985. He reapplied for unemployment benefit in October 1985 and was successful.

The issue to be decided was whether the cancellation was valid and therefore whether the applicant should have been in receipt of the benefit at all relevant times.

The DSS stated that the benefit was stopped because the applicant had not kept in touch with the Department. He failed to respond to a request to contact the DSS about his benefit just before it was cancelled. In earlier communications with the DSS the applicant had indicated that he was noncommittal as to whether he would give up his course if suitable work came along.

The AAT concluded on the evidence that the applicant's primary commitment during his period of enrolment

in the electronics course was to study and not to gaining work. The demands of that course would have prevented him from seeking full-time work and he was not serious in pursuing such work in that period. The course was designed to improve his job prospects in the electronics field. During the period from the end of his study until his new application for unemployment benefit the applicant was in a stressful position which prevented him from making any real attempt to seek work.

The legislation

Section 107(1)(c) provides that to qualify for unemployment benefit the person must be unemployed, capable of undertaking and willing to undertake paid work suitable to be undertaken by that person and must take reasonable steps to obtain such work.

Section 135TJ(1) allows the Secretary