

applicant's income it was assumed that she retained all her current sources of income and they continued to yield income at the current level [*Harris* (1985) 24 SSR 294]. The Tribunal then adopted the reasoning in *Haldane-Stevenson* (1985) 24 SSR 296 that in the context of the *Social Security Act* 'income' did not mean taxable income but 'net earnings, moneys, valuable consideration and profits and it is the net income from each source which is to be taken into account in the calculation of a pensioner's annual rate of income' (cited in Reasons, para.16).

The AAT arrived at an annual income of \$5,891. This figure was arrived at by adding to her taxable income an amount which represented a capital expenditure in relation to a windmill on the property and the clearing of the property. The Tribunal said:

'These are items of capital expenditure, which Parliament has said are nevertheless to be deductible from a taxpayer's assessable income in order to arrive at a taxable income. This has no doubt been done with a view to encouraging the improvement of land for use in primary production. Considering the definition of 'income' in the *Social Security Act* in the light of the passages cited from *Haldane-Stevenson* ... I do not consider that it is appropriate, in calculating 'income' in the context, even if it not strictly for the purposes, of the *Social Security Act*, to deduct the whole share of the cost of the windmill in the year in which it was incurred. The appropriate method of allowing for the capital costs incurred in earning income must be by some form of

depreciation over a period.' (Reasons, para.24)

The tax returns of the family had shown that the whole cost of the expenditure on the windmill had been allocated to the applicant. The AAT did not consider that such an allocation, however correct in the context of taxation, was an appropriate method of ascertaining the income of a pensioner for the purposes of the assets test.

The income figure arrived at by the AAT being greater than the amount of the maximum rate of pension for a single person it could not be said that she suffered 'severe financial hardship'.

Formal decision

The AAT affirmed the decision under review.

Assets test: shares

COWLING & COWLING and SECRETARY TO DSS
(No. S86/149)

Decided: 19 December 1986 by R.A. Layton, J.A. Kiosoglous and B.C. Lock

The applicants had had their age pensions cancelled after the application of the assets test to their assets. They applied to the AAT for review of that decision.

The facts

The combined income of the applicants (from interest, shares and bonds) was \$11,689 per annum. This gave each a weekly income of \$112.39 which would have qualified them for a part pension if the income test only were to apply.

The assets of the applicants totalled \$197,667. This included bank accounts, shares, bonds, household goods and a car. By the application of the assets test this amount reduced the rate of their pension to zero.

Discrimination against those subject to the assets test?

The applicants presented a number of arguments in support of their application. First, they argued that the Act discriminated against persons dealt with under the assets test. An assessment under that test led to harsher dealing than under the income test.

The AAT agreed that the Act did discriminate against those with assets but commented that:

'this reflects the advantages of owning property which may not only appreciate in value over the years, but which gives flexibility, and a capacity to be converted for variable use according to need.' (Reasons, para.9)

'Property' of the applicants

The AAT disagreed with the applicants' second argument that the shares they owned should not be assessed as 'property' but as 'income'. The Tribunal considered that shares were normally treated in law as a form of personal property.

The applicant's had then argued that their shares should be assessed at their nominal value and not at their market value. The assets test provisions of the *Social Security Act* do not refer to the 'market' value but only to the 'value' of property.

However, the financial hardship provisions imply a market value when referring to the 'sale' or 'realization' of property. Also, the common usage of 'value' implies the amount that could be obtained for a thing when sold.

The Tribunal also referred to the decision in *Reynolds* (1987) 35 SSR 444 where the Tribunal concluded that the value of property to be disregarded in s.6AA of the Act was ascertained by reference to the net market value of the property. The AAT concluded that all property should be valued at its market value.

'If persons have income or property above [the] limits [imposed by the income and assets tests], then the income or property is expected to be used for their financial support, if required rather than relying on governmental, and therefore public, support by way of a pension. If the property or asset is sold or realized for their support, it is the market value which is the more appropriate measure of value...' (Reasons, para.17)

Fluctuation in market value of shares

The AAT conceded that there existed

a problem with notifying the DSS of the value of assets given the fluctuation in the share market. This may be resolved, it was suggested, by the DSS adopting a more appropriate time frame (currently eight weeks) within which changes in the market value of shares must be notified.

Share portfolio or superannuation fund?

Finally, the applicants pointed to apparent discrimination against pensioners who created their own share portfolio. The AAT did not accept this argument. Persons who joined superannuation funds did not have access to the assets of the fund but only to some form of pension or lump sum. This lack of flexibility or control was a disadvantage that the applicants did not suffer.

In either event the recipient of a pension or lump sum from a superannuation fund would be treated as having 'income' or 'property' - depending upon the nature of the receipt - and so be subject to the income and assets test just as are those who make their own arrangements.

Formal decision

The AAT affirmed the decision under review.

