

## Overpayment: amnesty

**OGSTON and SECRETARY TO DSS**  
(No. N86/893)

**Decided:** 11 September 1987 by  
R.A. Hayes.

The AAT affirmed a DSS decision not to extend an amnesty in respect of an overpayment to the applicant.

The DSS had announced an amnesty for people who reported their overpayments to the DSS during the period 12 February 1986 to 31 May 1986. Ogston contacted the DSS on 20 February 1986, and said that he had concealed his wife's income while he was receiving unemployment benefit over the preceding two years.

Ogston told the AAT that he had initially concealed his wife's income because he had expected to be on unemployment benefit only for a short period; and that he had thought that disclosure of his wife's income 'would jeopardise their financial security'.

The legislation incorporating the amnesty, s.45 of the *Social Security Act*, was introduced on 3 June 1986 - that is, 3 days after the end of the amnesty period. Sub-section 45(2) provided that a person, who had made a false statement to the DSS and had been overpaid, would not be guilty of an offence and would not be liable to

repay the overpayment so long as -

(c) the person had not known that the statement was false at the time of making it; and

(d) the person had voluntarily informed the DSS of the false statement during the amnesty period.

The AAT said that it was clear that Ogston could not meet the requirements of s.45(2)(c): 'Whatever his motivation, it is clear that in filling out the claim form, he deliberately concealed the fact of his wife's employment': Reasons, p.7.

## Assets test: hardship

**ROCHE and SECRETARY TO DSS**  
(No. N86/651)

**Decided:** 16 October 1987 by  
J.O. Ballard.

Mr and Mrs Roche were age pensioners. Their pension had been cancelled because of the value of their assets, including a farming property, which was being worked by their son.

Mr and Mrs Roche asked the DSS to disregard the value of the farm under the hardship provisions. The DSS refused to do this because Mr Roche had life insurance policies with a surrender value of \$12 924. Mr and Mrs Roche asked the AAT to review that decision.

### The legislation

At the time of the decision under review, s.6AD(1) of the *Social Security Act* provided that property should be excluded from the value of a pensioner's assets where it was not reasonable to expect the pensioner to realize the property or use it as

security for borrowing, and where the pensioner would suffer 'severe financial hardship' if the value of the property were taken into account.

The DSS had adopted a policy guideline that a married couple would not be regarded as being in 'severe financial hardship' where they had more than \$10 000 in readily available money.

### Are life policies immune?

It was agreed between Mr and Mrs Roche and the DSS that s.6AD(1) applied to their farming property - apart from the question whether they would be in 'severe financial hardship' if their property were taken into account.

The dispute focused on the question whether the surrender value of the life policies was relevant in deciding whether there would be 'severe financial hardship'.

The AAT noted that, in cases such as *Doyle* (1986) 33 SSR 414, the AAT had accepted the DSS policy 'and

applied a limit of \$10 000 to readily available funds'. Earlier decisions had also taken insurance policies into account: *Lumsden* (1986) 34 SSR 430; *Pardew* (5 December 1986).

The AAT said that the insurance policies on Mr Roche's life had no 'special features . . . militating against sale or realisation'. There was 'no difference in principle between insurance policies, stocks and shares or money in the bank': Reasons, para.15.

The AAT concluded:

'The consequence is, applying the \$10 000 criteria [*sic*] accepted in *Doyle's* case, that the surrender value of any insurance policies must be contained within that amount.'  
(Reasons, para.16)

### Formal decision

The AAT affirmed the decision under review.

## Family allowance: late claim

**RICH and SECRETARY TO DSS**  
(No. N87/88)

**Decided:** 11 September 1987 by  
R.A. Hayes.

Donna Rich gave birth to her son, B, in August 1967. She was granted family allowance for B.

When B turned 16, the DSS ceased paying the family allowance to Rich. However, as the allowance had been paid into a rarely-used bank account, she did not notice the cessation until January 1985. She then re-applied for the allowance and for payment for the period from August 1983 to January 1985.

The DSS accepted that that Rich was entitled to family allowance for B because he was a full-time student; but refused to pay allowance for the period from August 1983 to January 1985.

Rich asked the AAT to review that decision.

### The legislation

At the time of the decision under review, s.103(1)(f) of the *Social Security Act* provided that family allowance ceased to be payable when a child turned 16, unless the Director-General was satisfied, within 3 months of the child turning 16, that the child was a full-time student.

(In *Ozcagli* (1986) 34 SSR 439, the Federal Court had decided that this provision terminated entitlement to family allowance when a child turned 16 unless the parent satisfied the Secretary, within the 3-month period, that the child was a student child.)

At the time when Rich claimed arrears of the allowance, s.102(1)(a) permitted backdating of the allowance where the claim was lodged within 6

months of eligibility or 'in special circumstances'.

From July 1987, s.102(1)(a) was amended to provide that family allowance is now payable only from the 'family allowance period' during which the claim is lodged. (A 'family allowance period' is a calendar month, commencing on the 15th of each month.)

### Amendment not retrospective

The AAT noted that the new s.102(1)(a) removed the ability of the Secretary to backdate the grant of family allowance in special circumstances. However, when Rich claimed arrears, there was a discretion to backdate claims. When Rich lodged a new claim and sought payment of arrears, the Secretary was bound to deal with this according to s.102(1)(a) as it then stood.