

Cohabitation

RICHARDS and SECRETARY TO DSS

(No. Q86/193)

Decided: 10 July 1987 by D.P. Breen

The AAT *set aside* a DSS decision to cancel the widow's pension of the applicant on the basis that she was living in a de facto relationship and hence no longer eligible for the pension.

The tribunal first commented on the standard form letter sent by the DSS to the applicant which stated that 'a couple who for economic, social or other reasons shares accommodation, shall not be placed, in a better position than a legally married couple.' The AAT said of this letter:

'... as a dissertation of the law, if that was what it was intended to be, it would clearly be in error. The mere fact that a person is sharing accommodation with a

member of the opposite sex does not result in eligibility to receive a widow's pension. The concept of 'a woman who is living with a man as his wife on a bona fide domestic basis' involves far more than a simple proposition of sharing accommodation.'

(Reasons, para. 8)

The AAT accepted the evidence of the applicant that she was not living in a de facto relationship. Responding to a suggestion that the DSS had not followed national guidelines in the investigation of the case, the AAT said:

'... if the Department in an interview of a beneficiary or of an informant gleans information to the effect that a third party, who is also a beneficiary, is in some respect not eligible for the benefit which he or she receives, there should be conducted, in a situation

that accords as closely as possible in the given circumstances of the particular matter with the national guidelines, a separate interview with the third party beneficiary at which he/she is given the fullest possible appraisal of the information perceived to be adverse to his/her interests and a full and free opportunity to respond to it in his/her own terms. If that response is in terms which adopt the substance of the information, then in most circumstances it would be safe to act upon that adoption. If the response is in terms which reject the information, then, in the absence of other reliable information supporting it, rarely could that information safely be acted upon.

(Reasons, para. 21)

Assets test: valuation of debt

LENTHALL and SECRETARY TO DSS

(No. Q86/220)

Decided: 10 December 1987 by K.L. Beddoe, J.D. Horrigan and H.M. Pavlin.

Charles Lenthall asked the AAT to review a DSS decision to reduce his age pension on account of the value of his assets.

The major question raised before the Tribunal was the valuation of a debt owed to Lenthall by his son and daughter-in-law.

In 1980, Lenthall had sold his sugar cane farm to his son and daughter-in-law for \$98 670. The purchasers agreed to pay Lenthall instalments equal to 25% of gross receipts for the sale of produce from the farm. The whole of the purchase price was to be payable if the purchasers defaulted.

The purchasers defaulted in 1983 and \$69 998.66 remained unpaid. However, Lenthall did not exercise his rights under the contract of sale.

In July 1987, Lenthall and the purchasers executed a new agreement, providing that the unpaid balance of the purchase price should be paid by instalments of \$2 for every tonne of sugar cane harvested by the purchasers.

Not a new loan

Section 4(11) of the *Social Security Act* provides that the value of a loan made after the introduction of the sub-section (in 1986) is to include the unpaid principal but none of the interest payable on the loan.

The AAT said that the 1987 agreement was 'merely a rescheduling of payment of the existing loan' made in

1980; it was not a new loan and, therefore, was not caught by s.4(11) of the *Social Security Act*.

Face value or present value?

The DSS argued that the debt should be valued either by taking its face value or by determining its present value through an actuarial calculation.

The AAT said that, prior to the June 1987 agreement, it would have been appropriate to value the debt at its face value - because the purchasers were then in default and the whole of the balance was payable to Lenthall. But the new agreement 'had the effect of expunging the purchasers' default so that [Lenthall] thereby lost the right to enforce the payment in full'; and the 'face value method' was no longer the appropriate basis of valuation: Reasons, para.32.

The AAT agreed that the debt should be valued on an actuarial basis, but refused to adopt a draft put forward by the DSS, which indicated that, if the outstanding money were repaid over 25 years, its present value would be \$16 650. The AAT said that it could give little value to this draft, because its author was not available for cross-examination before the Tribunal.

Rather, the DSS estimated future sales of sugar cane from the farm at 2589 tonnes a year, which would allow payment of the debt at the rate of \$5178 a year - say \$5000. This would repay the loan in 14 years.

Taking into account that the payment of the debt was secured (Lenthall had retained legal title to the land), the AAT said that 14% was the appropriate rate of interest on which to calculate the present value of the right

to be repaid \$69 998.66 over 14 years. This calculation produced a present value of \$30 010.35 - say \$30 000.

Formal decision

The AAT set aside the decision under review and remitted the matter to the Secretary for reconsideration on the basis that the debt due to Lenthall should be valued at \$30 000.

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