Assets and income test: loans

GOWANS and REPATRIATION COMMISSION
(No. V86/216)
Decided: 12 January 1988 by I.R. Thompson.

Murray Gowans had been granted a service pension under the *Repatriation Act* 1920 from October 1984. With the introduction of the assets test in March 1985, the Repatriation Commission cancelled that pension because of the value of his assets.

Gowans asked the AAT to review that decision.

Can loan debts be deducted from the value of property?

The basic issue raised in this matter was the significance of three unsecured loans made to Gowans by a family company in 1983, 1984 and 1985, with an average value of $36 000. Gowans' counsel argued that these loans had created a debt owed by Gowans to the family company; and that the value of the debt should be deducted from the value of his property in order to arrive at the value of his assets.

The relevant legislation was s.6AA(1) of the *Social Security Act*, adopted for the purpose of service pensions by s.83 of the *Repatriation Act*. Section 6AA(1) provided that, in calculating the value of a person's assets, any debt secured by the person's property was to be deducted from the value of that property.

The AAT noted that the purpose of the assets test was apparently to compel a person with a high level of assets to sell them off or borrow to generate money to meet living expenses, before he or she was supported at public expense. If borrowings were secured, then the amount of the debts would be taken into account: s.6AA(1)(b).

Whether the loans were secured or unsecured loans, they would have much the same effect on the person's capacity to borrow; so that 'fairness' might require the two types of loan to be treated alike. But Parliament had only referred to secured loans:

> '[T]he effect of the inclusion of paragraph (b) in section 6AA(1) is that the amount of an unsecured loan is not to be offset against the value of a person's assets in calculating the value of his property for the purposes of the Social Security Act.'

(Reasons, para.18)

Are loan receipts 'income'?

The AAT also considered whether the loans received by Gowans from his family company could be treated as 'income' at the time of receipt. The Tribunal noted that the Federal Court had decided, in *Read* (1987) 38 *SSR* 484, that the definition of 'income' in the *Social Security Act* covered receipts of a capital nature. It also referred to the Federal Court decision in *Haldane-Stevenson* (1985) 26 *SSR* 323, that net income should be taken into account:

> '[F]or the purposes of the *Social Security Act*, the *Repatriation Act* and the *Veterans' Entitlements Act*, income included, and includes, moneys received by way of loan for the recipient's own use or benefit, unless their value is offset by payment of a "price" for them more or less contemporaneously with their receipt. The time at which the "price" is paid in any particular case must depend on the terms of the borrower's obligation to repay the loan and on the action taken by him to discharge those obligations. In the applicant's case repayment has not yet become due and may never do so; it has not been made. I am satisfied, therefore, that no "price" for the moneys borrowed was paid which was to be offset against them for the purpose of calculating net income.'

(Reasons, para.26)

Formal decision

The AAT affirmed the decision under review.

Amnesty

GEURTS and SECRETARY TO DSS
(No. V87/245)
Decided: 11 December 1987 by R.A. Balmford.

Laraine Geurts asked the AAT to review a DSS decision that she was not eligible for an 'amnesty' under s.5 of the *Social Security Legislation Amendment Act* 1986.

The facts

Geurts had been receiving a pension under the *Social Security Act*. She was visited by two DSS officers on 11 February 1986. They asked her several questions about her eligibility for pension and told her that an 'amnesty' would be announced.

The next day, the DSS issued a public statement to the effect that an 'amnesty' would be extended to people who voluntarily notified the DSS that they were being overpaid or wrongly paid under the *Social Security Act*.

On 17 February, Geurts visited a DSS regional office and completed an 'amnesty application form', indicating that she wished to cancel her pension.

Geurts was later told that her application for an 'amnesty' had not been successful.

The legislation

Section 45(2) of the *Social Security Legislation Amendment Act* 1986 provided that a person, who had received a pension following a false statement, would not be liable to prosecution or to repay the pension, if the person had, between 12 February 1986 and 31 May 1986, 'voluntarily informed the Department of the making of the false statement'.

According to s.45(5)(d), a person had not 'voluntarily informed the Department' where the person informed the DSS 'in response to a question asked of the person by the Secretary or any other officer'.

'In response to a question'

The AAT noted that Geurts had visited the DSS office and completed the amnesty form after a visit from DSS officers. That, the AAT said, amounted to a response on her part to questions asked by DSS officers:

> 'For the purposes of paragraph (d), I consider that the "response" in question need not have been made on the date on which the questions were asked, in order to constitute a "response" within the meaning of that paragraph.'

(Reasons, para.10)

This was enough, the AAT said, to prevent Geurts qualifying for the amnesty.

Formal decision

The AAT affirmed the decision under review.