

The real issue for the Tribunal was whether the return of capital in these circumstances could be described as the receipt of 'money' in the form of capital. The Tribunal canvassed a number of authorities from different jurisdictions on the meaning of 'money' before deciding that, in its present context, the word 'money' must also connote a reward 'from personal exertion or as consideration for some services rendered' (*Flanigan* (1984) 22 SSR 256).

In summary, the Tribunal said that the words 'personal earnings, moneys, valuable consideration and profits' carry the basic meaning of 'gains derived by a person as a result of the provision by that person of consideration in the form of personal exertion or other services or the disposition of property'.

#### Formal decision

The Tribunal held that the part of Mr Hungerford's annuity which represented the return of capital was not income for the purposes of the *Veterans' Entitlements Act*.

[A.A.]

## Income test: farm 'profit'

**MILLER and SECRETARY DSS**  
(No. S89/263)

**Decided:** 7 September 1990 by J.A. Kiousoglous, J.T.B. Linn and D.B. Williams.

The DSS raised an overpayment of unemployment benefits recoverable from Valerie Miller. On review, the SSAT agreed with the calculation of the overpayment but waived recovery of half the debt because of administrative error by the DSS. The DSS accepted this decision but Miller applied to the AAT for it to be reviewed.

#### The facts

Miller, in partnership with her husband and son, ran a farm that received its income from the sale of wheat and wool in December or January each year.

She was paid unemployment benefit from May 1987 until September 1988. Initially she provided the DSS with a copy of her 1985/86 tax return which showed a loss for the partnership. Her 1986/87 tax return showed a profit but this was not declared to the DSS. She

continued to lodge fortnightly forms in which she stated that no income had been derived during the (2 week) period.

On 7 June 1988, the DSS reviewed Miller's position and decided to review again upon lodgment of her next tax return. Miller's 1987/88 tax information, which showed a profit, was made available to the DSS in September 1988.

The DSS subsequently raised an overpayment of \$4647.68 for the period 10 October 1987 to 17 June 1988. Unfortunately the AAT did not fully explain the reasons why the DSS chose these dates other than that Miller 'could only have been expected to be aware of the 1986/87 financial year statement and of the profit which it showed, in October 1987': Reasons, para. 10.

The SSAT agreed with the overpayment sum but waived half because of the Department's failure to seek details regarding Miller's financial position.

Shortly prior to the AAT hearing, the DSS discovered that the overpayment had been wrongly calculated but agreed to waive the additional amount.

#### The legislation

'Income' is defined in s.3(1) of the *Social Security Act* to include 'profits'.

#### The applicant's argument

Miller argued that capital repayments and family expenditure (including insurance, medical expenses and accommodation costs for her daughter in Adelaide) should be allowed as deductions in determining her income. As far as she was concerned she had not made a profit because she was in debt.

#### Deductions not allowed

Reference was made to the cases of *Haldane-Stevenson* (1985) 26 SSR 323, *Paula* (1985) 24 SSR 288, *Hales* 47 ALR 281 and *Ward* (1985) 7 ALN N66. In particular, *Paula* was relied upon for the principle that --

'Private expenses such as medical expenses and living costs are not deductible.'

(Reasons, para. 15)

The AAT did not specifically comment on the deductibility of capital repayments. However, as it affirmed the decision under review, it is presumably to be taken as deciding that capital repayments cannot be deducted.

#### Waiver

The AAT agreed with the Department's decision to waive the additional amount due to the recent recalculation and agreed with the SSAT's decision in relation to waiver.

#### Difficulties with fluctuating farm income

Comments were made about difficulties caused by severe fluctuations in farm income and the AAT suggested that --

'Careful continuing review of these fluctuations in income should become part of the normal screening by the Department in cases such as this where Unemployment Benefit and other pensions depend on income earned.'

(Reasons, para. 21)

Unfortunately, the AAT itself avoided discussion of the difficult issues surrounding notification of variations in income of farms and other small businesses.

#### Formal decision

The AAT affirmed the decision under review.

[D.M.]

## Unemployment benefit: income test

**FERGUSON and SECRETARY TO DSS**  
(No. 6483)

**Decided:** 6 November 1990 by K.L. Beddoe.

Maxwell Ferguson had been granted unemployment benefit. He held an investment of some \$40 000 in a managed investment trust (AFT), which made quarterly distributions of profits. In calculating the rate of Ferguson's benefit, the DSS decided to treat the fortnightly average of the amount distributed in the previous four quarters as Ferguson's income for each fortnight in the current quarter.

The result of this decision was that Ferguson's income was assessed at a fortnightly figure \$36 higher than it would have been if it had been based on the most recent quarterly distribution.

This decision, according to the DSS, was based on 'Government policy expressed by our Special Policy Unit'.

Ferguson applied to the AAT for review of that decision.

#### The legislation

Section 122(1) of the *Social Security Act* provides that the rate of unemployment benefit payable to a person is to be reduced by reference to the person's income, where that income exceeds \$60 a fortnight.