

Administrative Appeals Tribunal decisions

Income test: interest-free loans

HILL and REPATRIATION
COMMISSION

(No. 6379)

Decided: 13 November 1990 by T.E. Barnett.

The applicant sought review of a decision of a delegate of the Repatriation Commission that certain interest-free loans received from a family trust were income.

Facts

Hill was the trustee of 2 family trusts. These 2 trusts were in turn beneficiaries under a third trust.

The applicant received loans from 2 of the trusts over a period of time, the proceeds of which were used for personal expenditures. The loans were interest free and only repayable on Hill's death or on the sale of his family home. There had been no repayment by Hill of any of the loans as at the date of proceedings in the AAT.

Legislation

At all material times the definition of 'income' in s.35(1) of the *Veterans' Entitlements Act 1986* was the same as that in s.3(1) of the *Social Security Act*, namely —

'personal, earnings, moneys, valuable consideration or profits whether of a capital nature or not, earned derived or received by that person for his own use or benefit by any means from any source whatsoever, within or outside Australia, and includes a periodic payment or benefit by way of gift or allowance . . .'

Decision

The Tribunal referred to *Gowans and Repatriation Commission* (1988) 42 SSR 535, which dealt with 'loans' in these circumstances. There the Tribunal had said that such 'loans' would be treated as a gift or as money received, and so within the meaning of the definition of income in s.35(1),

'unless the price was paid more or less contemporaneously with the 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 this case there was no identifiable price paid for the loan nor any attempt

by the applicant to discharge his obligation to repay the loan. The AAT decided that the loans were in fact in the form of income within the meaning of s.35(1).

Formal decision

The decision of the delegate of the Commission to treat the loans as income was affirmed.

[A.A.]



Income test: Pyramid investment

SECRETARY TO DSS and
RAISBECK

(No. 7098)

Decided: 28 June 1991 by D.F. O'Connor J., B.M. Forrest and G. Woodard.

The DSS asked the AAT to review a decision of the SSAT, which adjusted Albert Raisbeck's age pension from 3 May 1990 following a change in financial circumstances notified to the Department on 5 July 1990.

The facts

On 3 May 1990, Raisbeck and his wife made investments in the Pyramid Building Society upon which interest was to be paid. The DSS was notified of the investment on 3 May 1990 and reduced Raisbeck's pension on the basis of the anticipated income.

No interest was ever paid and, on 25 June 1990, Pyramid suspended trading. On 3 July 1990, the DSS issued a press release advising that no pension deductions would be made for loss of expected interest on Pyramid investments if pensioners notified the Department of their investments. On the same day, Raisbeck notified the Department of his investment.

The issue arose whether Raisbeck was then entitled to a favourable adjustment of pension from 3 May 1990 or only from 5 July 1990.

The legislation

Section 168(3) of the *Social Security Act* authorises the Secretary to determine an increase in a pension rate where the Secretary is satisfied it should be granted.

Section 168(4) provides for the date of effect of a determination under s.168(3).

Section 168(4)(a) allows such a determination to take effect from the date of a previous decision where the person has applied for review of that previous decision.

Section 168(4)(c) declares that the s.168(3) determination will take effect from the date on which the person advised the DSS of a change in circumstances, where the determination is made following the person advising the DSS of a change in circumstances.

No back-dating

The AAT held that the date of effect of the Secretary's determination to grant an increase was controlled by reference to s.168(4)(c). In so doing, the Tribunal noted that s.168(4)(a) only applied to certain circumstances where a request for review had been lodged by the applicant.

In determining that s.168(4)(c) applied, the AAT noted there must be some causal connection between the notification by the applicant of their changed circumstances and the Secretary's determination to grant an increase. Section 168(4)(c) did not permit retrospective increases of pensions.

Formal decision

The AAT set aside the SSAT decision and substituted the decision that the Secretary's determination to increase Raisbeck's pension was to take effect from 5 July 1990 (the commencement of the next pension period after 3 July 1990).

[Comment: In the course of its decision the AAT noted that s.168 can operate, and has in this case operated 'harshly' to prejudice pensioners for circumstances beyond their control. Similar criticism was made by the Tribunal in *Moore* (unreported 25.2.91; O'Connor J.) and *Conder* (1990) 56 SSR 753.]

[A.A.]

