that the property concerned be valued again taking full account of the existence of the mother's life tenancy as a factor reducing the value of the property in the wife's hands. However, this view may be inconsistent with ss.4(1)(b) and 4(10) of the Act, depending upon the width of the meaning given to the words 'charge or encumbrance' in s.4(1)(b). If a life tenancy is a 'charge or encumbrance', then the property must be valued without deduction for the life tenancy if the life tenancy was given for the benefit of a person other than the applicant or a spouse, which is the case in the present instance.]

[A.A.]

Assets test: disposal

SECRETARY TO DSS and DOYLE (No. 6346)
Decided: 6 November 1990 by K.L. Beddoe.

Margaret Doyle, who was born in 1915, claimed an age pension in 1989. The DSS decided that Doyle had disposed of assets valued at $82 624 for inadequate consideration, by transferring her share in a farming property to her son. The DSS concluded that the value of her assets, including the assets disposed of, exceeded the limit fixed by the assets test.

On review, the SSAT decided that Doyle had received adequate consideration for her transfer of property. The DSS asked the AAT to review that decision.

The legislation

Section 6(2) of the *Social Security Act* provides that property disposed of by a person is to be included in the person's property for the purpose of the assets test.

According to s.6(10), a person disposes of property for the purposes of s.6 where the person disposes of that property for no consideration or inadequate consideration.

The evidence

In 1975, Doyle and her husband were tenants in common of a farming property, which was farmed under a partnership agreement with their son, each of the partners holding a 1/3rd share.

In 1979, Doyle's husband died, leaving his 1/2 share in the property and his 1/3rd share in the partnership to his son. From that time, the business of the partnership was conducted by Doyle's son, who lived on the farming property.

By 30 June 1988, the partnership had become insolvent, with a deficiency in the accounts of $114 946. By a contract executed on 25 August 1988, Doyle agreed to sell to her son her 1/2 interest in the property and her 1/3rd interest in the partnership at a consideration of $165 124. The consideration was to be paid as follows:

- $10 000 on completion;
- $40 000 in instalments, free of interest;
- $82 624 to be forgiven by Doyle in consideration of the many years of unpaid labour carried out by her son on her behalf.

The SSAT took the view that the contribution made by Doyle's son to the partnership and the farming business justified the notional payment of $82 624 by Doyle.

Inadequate consideration for transfer

The AAT decided that Doyle's son would have had no claim on her for the labour which he put into the partnership and the farm business. He had been given a 1/3rd interest in the partnership in return for his labour. It could not be said that his labour amounted to consideration for the transfer of Doyle's interests.

The AAT also said that it would not be realistic to read the 1979 partnership agreement made between Doyle and her son when she was 64 years of age as contemplating that Doyle should participate actively in the partnership.

It followed that there was no basis on which the Doyle's son could have had a monetary claim against her, on the principle in *Airey v Borham* (1861) 29 Beav. 620, because of her failure to participate actively in the partnership.

Finally, the AAT said, the element of the price to be paid by Doyle's son which consisted of the $40 000 interest free loan, should be discounted to $23 336, leaving a further deficiency of $29 754.

Formal decision

The AAT set aside the decision of the SSAT and remitted the matter to the Secretary with a direction that there had been an inadequacy of consideration for the purposes of s.6 of the *Social Security Act*.

[P.H.]

Family allowance: income test

SECRETARY TO DSS and CROSS (No. V90/2)
Decided: 30 August 1990 by H.E. Hallowes.

Josephine Cross lodged a claim for family allowance for her 5 children on 1 September 1988, shortly after the birth of her 5th child. Her claim was rejected because of the combined taxable income of Cross and her husband.

On 31 January 1989, Cross lodged a further claim for family allowance, and this claim was accepted. She was paid a reduced allowance of $8 a fortnight.

On 14 July 1989, Cross applied for an increase in the rate of her allowance, on the basis of a reduction in combined taxable income. The DSS rejected this application.

On review, the SSAT decided that Cross was eligible for family allowance from 1 September 1988, the day on which she had lodged her first claim. The DSS asked the AAT to review that decision.

The first period

The AAT first considered Cross's eligibility for family allowance at the time of her claim on 1 September 1988.

At that time s.85(1) of the *Social Security Act* fixed the income threshold, based on combined taxable income in the 'last year of income', namely the year of income ending on 30 June in the preceding calendar year. The income threshold applicable to Cross was then $60 000.

Under s.85(3), no family allowance would be payable where the relevant taxable income was $68 586.

Section 85(8) provided that, for the period 15 October 1987 to 14 January 1989, the 'last year of income' was the 1986/87 tax year.

Section 85(7) allowed combined taxable income in the following year of income to be used for the income test, where that combined taxable income was, or was likely to be, at least 25% less than the person's taxable income in the last year of income.

In the 1986/87 tax year, the combined taxable income of Cross and her husband was $68 808; and in the 1987/88 tax year it was $71 420.

The AAT had no difficulty in deciding that Cross was not eligible for family allowance at the time of her first claim: her combined taxable income in 1986/