

## Compensation: incapacity component

MILLARD and SECRETARY TO  
DSS

(No. 8048)

**Decided:** 26 June 1992 by K.L. Beddoe, I.R.W. Brumfield and B.A. Smithurst.

Craig Millard sought review of a decision of the SSAT which had affirmed a decision of the DSS that Millard must repay social security payments of \$6347.52 paid to him during the 'lump sum payment period'.

### The facts

Millard was injured in a car accident on 4 May 1987. He was awarded damages of \$87 150 on 8 February 1990 in the Queensland District Court. At the time of the accident Millard was in receipt of unemployment benefits. After he left hospital, he was paid sickness benefit of \$1550.40 until 28 August 1987 and then unemployment benefits until 1 September 1988.

Millard was awarded \$1550.40 for pre-trial economic loss, \$55 000 for future economic loss, and \$25 000 for loss of amenities including \$5000 for the pre-trial period.

The DSS issued a notice demanding payment of \$6347.52. Millard's solicitors paid \$1550.40 and advised the DSS that the judge had specifically awarded \$1550.40 for pre-trial economic loss.

### The law

Section 153(1) of the *Social Security Act 1947* provided that, where a person received a lump sum payment of compensation, a pension or benefit was not payable during the lump sum payment period.

Section 153(2) provided that, if a pension or benefit was paid during the lump sum payment period, the DSS could issue a notice specifying the amount to be repaid to the Commonwealth.

The 'lump sum payment period' was defined in s.152(2)(e) as the number of weeks calculated by dividing the compensation part of the lump sum by the average total weekly earnings of all male employees. The period commenced on the date the incapacity for work began: s.152(3)(a).

The 'compensation part of the lump sum' was defined in s.152(2)(c) as 50% of the lump sum payment if the settle-

ment was entered on or after 9 February 1988, or in any other case so much of the lump sum as was, in the opinion of the DSS, in respect of an incapacity for work.

To determine what part of the lump sum was in respect of an incapacity for work, the AAT referred to *Secretary to DSS v a'Beckett* (1990) 21 ALD 79; 57 SSR 779. The Federal Court had noted that there no longer had to be a coincidence between the period when pension payments were received and the period for which the person received damages or compensation. This was precisely the case in this matter.

In the opinion of the AAT, the amount of the lump sum which was in respect of an incapacity to work was \$56 550, the damages for past and future economic loss. Such a decision did not mean that the District Court had decided the past economic loss component incorrectly, it simply reflected the requirements of the *Social Security Act 1947*.

### Formal decision

The AAT affirmed the decision under review.

[C.H.]

## Compensation: lump sum or periodic?

CHAHOUD and SECRETARY TO  
DSS

(No. 8019)

**Decided:** 16 June 1992 by D.F. O'Connor J.

George Chahoud requested review of a decision of the SSAT affirming a DSS decision that the sum of \$27 011.36 be recovered from Chahoud's compensation award.

### The facts

Chahoud was injured at work on 13 September 1988 and received weekly payments of compensation until 7 October 1988 when liability was denied. Between 8 December 1988 and 28 August 1991 Chahoud was paid sickness benefit, unemployment benefit and the newstart allowance. On 8 February 1989 Chahoud was advised by the DSS that he might have to repay these benefits.

Chahoud received a lump sum award of compensation on 29 July 1991, which purported to be the sum of different rates of weekly payments payable to Chahoud between 1 December 1988 and 30 June 1991. The DSS determined that the total amount of social security payments paid to Chahoud in that period, \$27 011.36, had to be repaid.

### The law

Pursuant to s.1163(1) of the *Social Security Act 1991*, the social security benefits paid to Chahoud were affected by the receipt of any compensation payment. If a person receives compensation in the form of a series of periodic payments then any pension payable is reduced by the amount of that payment: s.1163(3).

It was submitted on behalf of Chahoud that he had not received a series of periodic payments of compensation, but a lump sum. This would mean that the period during which Chahoud would be precluded from receiving a pension would be considerably reduced, and the amount he would have to repay far less.

The AAT rejected this argument, stating that the purposive approach should be adopted when construing the legislation. It considered the Federal court cases of *Secretary to DSS v Banks* (1990) 95 ALR 605; 56 SSR 762, *DSS v a'Beckett* (1990) 21 ALD 79; 57 SSR 779; and *Secretary to DSS v Hulls* (1991) 22 ALD 570; 57 SSR 766; and stated:

'[T]he cases are not binding on the Tribunal and do not really support the applicant's case. They all have in common the purposive approach to interpreting the legislation (which is similar to the legislation in question). The aim of the legislation . . . was to prevent "double-dipping", to prevent a person receiving a pension in respect of incapacity to work when s/he has received periodic payments in respect of the same period.'

(Reasons, para. 12)

The amount received by Chahoud was simply arrears of periodic payments. Future payments of compensation were also in the form of periodic payments. The only difference between these payments was the delay in payment.

### Formal decision

The AAT affirmed the decision under review.

[C.H.]