

Administrative Appeals Tribunal decisions

Age pension: notification of change in circumstances

MR AND MRS VITALONE and SECRETARY TO DSS (No. 10284)

Decided: 11 July 1995 by J. Mathews.

The Vitalones requested review by the AAT of 2 decisions of the SSAT that they each owed debts of invalid pension and wife pension. The SSAT waived both debts.

The facts

On 12 July 1989 the Vitalones lodged claims for invalid pension and wife pension. In her claim form Mrs Vitalone advised that she was working as a casual packer and that her wages varied. The DSS had advised her to complete the form this way. The Vitalones were paid pension from 20 July 1989, and the rate took into account Mr Vitalone's superannuation payments but not Mrs Vitalone's income. The Vitalones each received notification of the DSS decisions in letters. They were advised to notify the DSS within 14 days if their combined income exceeded a certain amount. Mrs Vitalone's income alone exceeded this amount.

After receiving the letter Mr Vitalone went to an office of the DSS to explain about his wife's job. He was told that the DSS does not worry about casual work. He rang the DSS a few days later but was told that he should contact an Italian association because the officer could not understand him.

A data matching program with the Taxation Department identified Mrs Vitalone's income in early 1993. Mrs Vitalone told the DSS that she had stopped work on 13 September 1991. The DSS calculated that Mr Vitalone owed a debt of \$3124 and Mrs Vitalone owed \$8775.

The debt

To establish a recoverable debt, the DSS must show that the Vitalones failed to comply with relevant notices. The relevant legislation was that set out in s.163 of the *Social Security Act 1947*, and s.1224 of the *Social Security Act 1991*. Section 163 provided that a person must advise the DSS of any change in circumstances specified in a notice. Section

1224 provides that if a person fails or omits to comply with a provision of either the 1947 Act or the 1991 Act, then any amount paid as a result is a debt due to the Commonwealth.

The initial letters to the Vitalones were such notices, as were computer generated letters which were sent to them over the subsequent years. There was a dispute between the parties about exactly which letters were sent. Following the first letters which set out the income being taken into account by the DSS, Mr Vitalone went to the DSS with details of his wife's wages. Therefore, neither of the Vitalones failed to comply with the first notices, because they advised the DSS within 14 days that the income amount being taken into account was incorrect.

The DSS argued that the Vitalones had failed to comply with later notices. The relevant part of these notices would have stated:

'You only have to contact us if your details have changed.'

Please remember we do not need to know changes in your income together with your (SPOUSE'S) income unless it becomes more than (INCOME NOTIFICATION AMOUNT) a week.'

In the Vitalones' situation the income notification amount would have been \$3380. On behalf of the Vitalones, it was submitted that they had complied with these notices because their income had always exceeded this amount, and they believed that the DSS knew this.

The AAT found the Vitalones to be witnesses of truth who gave an honest and truthful account of their dealings with the DSS. Both are of Italian origin and have had little contact with the social security system in Australia. Mr Vitalone's English is limited. The present situation was due to lack of communication, and the DSS should bear responsibility for the Vitalones being unable to communicate with the DSS. The Vitalones had attempted to comply with the provisions of the Act set out in the notices.

'Section 163 is a penal provision. Non compliance with it is potentially punishable by imprisonment. Accordingly, it needs to be interpreted in a manner which is favourable to the individual concerned. It should certainly not be construed so as to impose strict liability. An element of fault on the part of the individual concerned is thus inherent in the concept of "refusing or failing" to comply with the section.'

(Reasons, para. 31)

The AAT accepted that subsequent notices had been sent to the Vitalones, based on the evidence presented by the DSS that notices were sent to pensioners following a CPI increase twice a year. The notices required the person to notify the DSS if their details had changed, and if the change had led to an increase in income above a certain level. There was no change to the Vitalone's circumstances leading to an increase in income above the specified level. The Vitalone's income already exceeded that level. Therefore there was no failure to comply with these notices.

Formal decision

The AAT set aside the decision and substituted its decision that there was no debt.

[C.H.]

Debt: waiver and write off

BRUCE AND SECRETARY TO DSS (No. 10547)

Decided: 22 November 1995 by S.D. Hotop.

Background

The DSS had raised an overpayment of \$97,270 on the basis that Bruce had received widows pension and sole parent pension from 9 April 1974 until 17 December 1989 while she was living with a man, Maurice Kennett, as his wife.

In April 1993 Bruce had been convicted of the offence of defrauding the Commonwealth, and had been sentenced to 3 years imprisonment. The Court also ordered reparation of \$41,933. The conviction related to receipt of pension from October 1984 till December 1989.

Both the authorised review officer and the SSAT had affirmed the decision to raise and recover the overpayment. Bruce then appealed to the AAT.

The issues

The AAT considered the following issues:

- was Bruce eligible for either widows pension or sole parent pension?
- was there a debt owing to the Commonwealth?