

Assets test: definition of homeowner

STANILAND and SECRETARY TO DSS

(No. 12104)

Decided: 11 August 1997 by K.L. Beddoe.

Background

Staniland applied for job search allowance (JSA) in December 1995. The DSS rejected his claim on the basis that the combined value of Staniland's and his spouse's assets exceeded the limit allowed by the assets test for homeowners. The SSAT decided Staniland's eligibility for JSA on the basis that he and his spouse were not homeowners. The DSS appealed this decision. Staniland also appealed the DSS assessment of the amount of benefit paid.

Mr and Mrs Staniland, their children and grandchildren were the beneficiaries of a discretionary trust established in June 1979. The trustee conducted orchard activities.

The issues

The issues were whether Mr Staniland was a homeowner for the purposes of the assets test; and how the value of Mr Staniland's assets were calculated.

The legislation

Section 529 of the *Social Security Act 1991* sets out the assets test for job search allowance. In the assets value table in s.529(3) the assets value limit varies depending on whether the person or partner is a homeowner.

Section 11(4)(b) of the Act defines a 'homeowner' as a person who is a member of a couple if the person, or the person's partner has a right or interest in one residence that is the principal home of both of them, and the right or interest gives reasonable security of tenure in the home. 'Principal home' is defined in s.11(5). The value of a particular asset is defined in s.11(2) and (3) to include the value of the person's interest in the asset.

'Homeowner'

The home was owned by the trustee for the benefit of the beneficiaries of the trust.

The AAT concluded that Staniland was 'the controlling mind of the trust with the power of appointment and removal of trustees and the ultimate power to alter, add to or revoke the trust deed': Reasons, para. 9.

The Tribunal was satisfied that Staniland, as a named beneficiary, had an interest in the property and had in the circumstances reasonable security of tenure. Alternatively, the AAT relied on *Robertson and Repatriation Commission* (1994) 34 ALD 615, to find that more likely than not the Stanilands had an unpaid vendor's lien in relation to the property for an amount which the AAT was unable to ascertain but which was reflected in the loan account. Consequently the AAT decided Staniland was a 'homeowner'.

Details of trust

The relevant financial accounts for the trust were those for the year ended 30 June 1996, and the AAT based its findings on those accounts (although it had access to earlier years accounts). The Tribunal noted that the trust disclosed an extraordinary profit due to the receipt of \$67,200 described as 'rents received'. The amount of \$67,200 was charged to the loan account of the Stanilands, and partly explained their loan account reducing from \$230,916 at 30 June 1995 to \$127,301 at 30 June 1996. Staniland gave evidence that \$67,200 was rent calculated to be due to the trust for occupancy of the residence owned by the trust backdated to 1980.

The subject property was purchased in May 1980 with funds provided by the Stanilands. It was unclear whether the property was originally purchased by the trustee or by the Stanilands in their own right, and subsequently transferred to the trust. The AAT inferred that the net purchase price to the trust was financed by a loan to the trust by the Stanilands and that loan is still reflected in their loan account with the trust. The Tribunal did not have sufficient information available to determine the amount of the cost of acquisition by the trust applicable to the house and curtilage which is reflected in the loan account. Recognising the limitations of material before the Tribunal it decided 'a just result will be achieved by reducing the value of the loan account by an offset for the rental arrears treated as income derived by the trust in the year ended 30 June 1996': Reasons, para. 18.

Formal decision

The AAT decided:

- to set aside the decision under review;
- that Staniland was a homeowner (as was his wife) for the purposes of the Act; and
- that the loan account in the name of the Stanilands should be notionally adjusted so as to offset the amount of the rental arrears owing by Staniland and his wife as at the date of application for

the purposes of the assets test. The amount of \$67,200 is to be treated as the arrears to 30 June 1996, and is to be reduced by \$3380 (\$130 x 26) to calculate the offset at date of application.

[M.A.N.]

Sole parent pension: member of a couple; effect of domestic violence on waiver and write-off

WILLIAMS and SECRETARY TO THE DSS
(No. 11793A)

Decided: 2 July 1997 by T.E. Barnett and Y. Haslam.

The issue

This matter concerned an overpayment of \$18,071.80 of supporting and sole parent pension (SPP) for the period September 1988 to August 1990. The DSS contended the overpayment had arisen because Williams had co-habited with Morrison during the period in question. Williams claimed that her relationship with Morrison was not a de facto marriage, and that in any case, there were by virtue of his lack of support for her and her child Candice, and his extreme violence, special circumstances sufficient to justify waiver of any debt that might be found to exist.

Background

The assertion that Williams and Morrison had entered a de facto relationship was supported by considerable and often inconsistent documentary evidence, including title deeds and loan application forms relative to the property jointly purchased by them in May 1989, statutory and other signed documents referring to Williams and Morrison as each other's 'spouse', affidavits variously indicating the commencement of the relationship between Williams and Morrison, and the evidence during the criminal prosecution of Williams of several witnesses supporting the existence of the relationship. Williams was convicted in November 1993 of multiple counts of knowingly obtain-