

able could not amount to consideration within the meaning of the Act.

The consideration relied on by May was the extinguishment of the debt legally owing by May to her daughter for unpaid salary under the terms of an oral contract.

May and her two daughters signed a partnership agreement in 1976. It made no provision as to payment of salary to any partners and provided that profits and losses be shared equally between the three partners. It was submitted by May that the written agreement was varied orally to provide for payment of salary to Dupleix. But salary was only paid in 1979, 1980, 1990, 1994 and 1995. The unpaid salary was submitted to be a debt owed to Dupleix.

The AAT was not satisfied by the evidence before it that there was an oral agreement between the partners to vary the partnership agreement to create a legal indebtedness from one partner to another. The Tribunal did accept the evidence that the reason the property was transferred in April 1995 was to avoid stamp duty on the transfer, and was not to obtain a social security advantage. The Tribunal also found that there was no consideration in money or money's worth for the transfer.

The AAT discussed the issue of family arrangements and expectations not meant to create a legal obligation. It referred to several relevant AAT decisions, and concluded 'that neither Mrs May nor Ms Dupleix intended that the work they both did on the farm should create between them the relationship of debtor and creditor': Reasons, para. 26.

The AAT also commented that it was aware that the assets test can create hardship for farming families, but 'that does not mean the Tribunal can uphold creative arguments as to the existence of legal obligations to family members when there was no legal obligation but only a family understanding': Reasons, para. 27.

#### Formal decision

The AAT set aside the decision under review and remitted the matters to the Secretary to the DSS for reconsideration in accordance with the direction that the entitlement to age pension of Mr and Mrs May be calculated in accordance with the Tribunal's finding that on 12 April 1995 May disposed of a farm property valued at \$260,000 by transferring that property to her daughter, and that May received no consideration in money or money's worth for that disposal.

[M.A.N.]

## Age pension: value of assets

**MILLER and SECRETARY TO THE DSS**  
(No. 12441)

**Decided:** 27 November 1997 by J. Handley.

#### The background

Mr and Mrs Miller claimed age pension on 29 December 1994. Their claim was rejected on the basis of the assets test. The total value of the assets of the Millers was assessed by the SSAT at \$790,518.72. This included shares in the company DJ Miller & Co. Pty Ltd valued at \$456,480. After a reorganisation of their financial affairs, the Millers were granted age pension in December 1996.

#### The issue

What was the value of the Millers' combined assets, in particular the shares in DJ Miller & Co. Pty Ltd in December 1994?

#### The legislation

The assets test is set out in s.1064-G1-5 and s.1203 of the *Social Security Act 1991*.

#### Value of assets

The issue in dispute was the assessed value of shares in the company DJ Miller and Co. Pty Ltd. These shares were valued at \$456,480 in December 1994, and consequently the Millers were not entitled to age pension payments.

The Millers submitted that the share value in December 1994 was more likely to have been \$240,138.37. This was based on a balance sheet submitted to the DSS in December 1996. The Millers' accountant also submitted that as a property which had been registered in the name of DJ Miller and Co. Pty Ltd was transferred in November 1996 to the Millers, the value of the shares should be further reduced by \$145,000. If this was the case then the combined assets would fall below the assets limit, and the Millers would be entitled to the pension prior to December 1996.

The AAT noted that the issue of whether the Millers were 'home owners' had been considered in previous reviews. The Tribunal agreed that the equity in the principle residence, prior to title being transferred in November 1996, was sufficient to regard the Millers as 'home owners'. This is relevant to the allowable asset limit.

The AAT concluded that irrespective of when the review of the Millers' assets occurred, the value of their assets exceeded the allowable limit. The Tribunal did not accept the accountant's evidence.

'At December 1996 a balance sheet presented to the respondent recorded the value of that company as \$240,137.87. The property . . . is not recorded as an asset. It had been transferred in the previous month to the applicants. It follows therefore that at all times prior to December 1996 the value of DJ Miller Pty Ltd must have been greater than \$240,137.87 so as to incorporate the value of the property.'

(Reasons, para. 13).

#### Formal decision

The decision under review was affirmed.

[M.A.N.]

## Compensation: special circumstances

**DEAN and SECRETARY TO THE DSS**  
(No. 12197)

**Decided:** 2 September 1997 by G.L. McDonald.

#### The background

Dean applied for carer pension in respect of her mother-in-law. It was accepted that she was qualified under s.198 of the *Social Security Act 1991* (the Act). Mr Dean was receiving compensation following injuries received at work in 1991 and exacerbated in 1993.

#### The issue

The issue was whether special circumstances existed which would allow the DSS to treat the whole or part of the compensation payment as not having been made.

#### The legislation

Section 17(2) of the Act defines compensation, and it was accepted that the payments received by Mr Dean came within that definition. Section 1163(1) of the Act states that if a person receives compensation, then the rate of pension paid to the person or the person's partner might be affected if that pension is a 'compensation affected payment'. 'Compensation affected payment' is defined in s.17(1) of the Act as including carer pension.

Section 1168 (1) of the Act provides:

'If:

- a person, or the person's partner, receives a series of periodic compensation payments; and
- the person receives or claims a compensation affected payment for the periodic payments period; and
- the person was not, at the time of the event that gave rise to the entitlement of . . . the person's partner, to the compensation, re-