

Federal Court Decisions

Compensation preclusion: commencement of the lump sum preclusion period

SECRETARY TO THE DSS v JACKSON

(Federal Court of Australia)

Decided: 22 October 1998 by Olney, Cooper and Moore JJ.

This was an appeal by the DSS against a decision of Spender J concerning the date of commencement of a lump sum preclusion period.

The facts

Jackson was injured at work in September 1990, and he received weekly payments of compensation for incapacity until 22 April 1991. He resumed employment in April 1991. He worked until February 1993 when he had an operation. Jackson was paid weekly payments until June 1993, when he received newstart allowance (NSA) until early 1995. In May 1995 he settled his common law damages claim for \$142,500.

The SSAT decision

The SSAT set aside the DSS decision to preclude Jackson from receiving social security payments between June 1993 and December 1995, and decided that the preclusion period of 130 weeks commenced in April 1991. The preclusion period represented an aggregation of periods between April 1991 and January 1993, and June 1993 and March 1994, thus excluding the period he was again in receipt of workers compensation payments.

The AAT decision

The AAT set aside the SSAT decision and affirmed the original decision to recover payments of \$26,381 newstart allowance paid during the period June 1993 and December 1995.

The Federal Court

Spender J adopted the reasoning of the SSAT.

The DSS argued that the preclusion period commenced in June 1993 and it was entitled to recover any benefit paid

to Jackson during the following 130 weeks. Jackson argued that the preclusion period commenced when he first stopped receiving weekly payments in April 1991, ceased when he returned to weekly payments in February 1993 until June 1993, and then continued until the end of the 130 weeks (March 1994). This would mean that the amount of NSA recovered would only be that amount paid between June 1993 and March 1994.

The law

The Court was satisfied that the formula set out in the Act had been correctly applied and that the lump sum preclusion period was 130 weeks. It was also satisfied that Jackson had been qualified for newstart allowance when it had been paid to him, and that the lump sum compensation was in respect of lost earnings or lost capacity to earn. Section 1165(3) provides:

'If periodic compensation payments are made in respect of the lost earnings or lost earning capacity, the **lump sum preclusion period** is the period that:

- (a) begins on the day after the last day of the periodic payments period; and
- (b) ends after the number of weeks specified in subsection (4).'

The preclusion period

The Court found that the words of the sub-section were clear, and:

'there is no warrant to be found in the statute to suspend the running of the lump sum preclusion period as contemplated by the primary judge.'

(Reasons, p.4)

To establish when the preclusion period begins, the Court applied s.17(1) which defined the term 'periodic payments period' as:

"'periodic payments period' means:

- (a) in relation to a series of periodic payments — the period in respect of which the payments are, or are to be, made . . .'

The Court noted that the definition referred to 'the period', which would suggest a single period. However, this could not be correct because each weekly payment of compensation was paid for a defined period, so that it would be more accurate to speak of periods. The court concluded:

'in the definition of periodic payments period, in relation to a series of periodic payments, it is the total of the several periods in respect of which compensation payments are made that is referred to.'

(Reasons, p.5)

Spender J had found that a series of periodic payments means a number of consecutive payments for a continuous

period of incapacity, and he found that there had been two series of periodic payments. The Full Court concluded that the word 'series' was not confined to referring to a number of consecutive weekly payments in an unbroken period.

'The totality of the several periods is obviously embraced by "the period" and in the absence of any apparent contrary intention the singular form would include the plural (*Acts Interpretation Act 1901*, s.23).'

(Reasons, p.6)

The Court found this interpretation to be consistent with s.1165(3) and (4) which referred to a single indivisible preclusion period beginning after the last day of the periodic payment period. Spender J had referred to a Full Court judgment of *Blunn v Cleaver* (1993) 47 FCR 111 as supporting his conclusion. However, the Full Court found that in that case the court had referred to the definition of periodic payments period as encompassing a number of series of periodic payments. Therefore, that case supported the conclusion that the term 'periodic payments period' covered several periods of periodic payments.

Formal decision

The Full Court allowed the appeal and reinstated the decision of the AAT, Moore J dissenting.

[C.H.]