

Administrative Appeals Tribunal Decisions

Age pension: rent allowance component; late application for review

KAUR and SECRETARY TO THE DFaCS

(No. 9900012)

Decided: 14 January 1999 by J. Brassil.

The issue

In this matter the issue was whether Mrs Kaur was entitled to increased age pension (AP) due to an increase in the rate of rent allowance (RA) from a date earlier than 14 April 1998. The decision to pay AP at a higher rate from that date was affirmed by an authorised review officer (ARO) in May 1998 and by the SSAT in July 1998.

Background

Kaur's husband died in early April 1997 and on 27 April 1997 she lodged a claim for AP, in which she advised that she paid board of \$85 a week to her son, with whom she was living. On 9 April 1998 she advised Centrelink that she had actually been paying \$100 a month in board since April 1997, and produced several receipts to this effect. On 9 April 1998 she was advised that her rate of board was too low to be eligible for RA, but on 14 April Kaur provided two receipts indicating a rate of \$1200 for 6 months (a doubling of the previously advised rate of board). On 5 June 1998 Kaur's son made a statement indicating that his mother's advice of 9 April 1998 should have referred to an amount of \$50 a week in board and contended that a receipt previously provided to Centrelink (showing an amount of board of \$560 for 2 months) should have referred to an amount of \$50 a week.

Centrelink accepted that Kaur was paying an amount of \$560 a quarter and paid RA on this basis, with effect from 1 March 1998. Kaur left for overseas on 29 May 1998; it was not in dispute that she was ineligible for RA whilst overseas. Centrelink accepted that the increased rate should not have been paid earlier than 14 April 1998 but, as this earlier starting date had occurred through Department error, indicated that no recovery of the amount of increased AP

incorrectly paid between 1 April 1998 and 14 April 1998 would be sought.

The law

The *Social Security Act 1991* (the Act) provides by s.76 that the rate of AP may be increased where Centrelink determines that it is being paid at a rate less than that to which an applicant is entitled. That section provides:

'76. If the Secretary is satisfied that the rate at which an age pension is being, or has been, paid is less than the rate provided for by this Act, the Secretary is to determine that the rate is to be increased to the rate specified in the determination.'

However, where a decision as to the rate of AP is made and notified to an applicant, and a review of the decision is sought more than 3 months later, any change in the rate of the AP as a result of such review takes effect only from the date the review was sought, as provided in s.80(3) of the Act:

'Notified decision—review sought after 3 months

80.(3) If:

- a decision (in this subsection called the "previous decision") is made in relation to a person's age pension; and
- a notice is given to the person to whom the age pension is payable advising the person of the making of the previous decision; and
- the person applies to the Secretary under s.1240, more than 3 months after the notice is given, for review of the previous decision; and
- the favourable determination is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.'

Under s.1302A of the Act a notice of decision sent by correctly addressed mail to a person is taken to have been given to that person.

It was submitted by the Department (now Centrelink) that no formal documentation confirming the rate of board was submitted by Kaur when her claim was lodged, and so RA could not be paid to her at that time. Further, it was noted that a letter of advice regarding her rate of AP was sent to her on 9 April 1997. As she had not sought a review within 3 months of that letter, Centrelink argued that any increase as a result of reassessment of her entitlement could not take effect earlier than when review was sought, namely April 1998. Kaur denied receipt of the letter from Centrelink in April 1997.

The decision

The AAT concluded that there was no documentary evidence available at the time the AP claim was lodged to support the claims of \$85 or even of \$50 a week in board. Despite the assertions by Kaur's son, the Tribunal was not convinced that such documentary evidence (receipts) had actually been produced to Centrelink. The Tribunal determined that the letter of April 1997 had been sent by Centrelink and received (or could be deemed to have been so received) by Kaur. As she did not seek review of the rate of her AP until almost 12 months later in April 1998, she was unable to be paid at the higher rate from a date earlier than when the review was sought.

The AAT stated:

'the Tribunal is not convinced that any payment was ever made by the applicant. As it is not mandatory that payment be actually made before a decision on eligibility for rent allowance, it is sufficient that a debt has been raised in respect to rent... it is not necessary... to decide whether the receipts presented were genuine acknowledgements of payments made by the applicant.'

(Reasons, para. 24)

Formal decision

The Tribunal affirmed the decision under review.

[P.A.S.]

Overpayment of newstart allowance: commencement date for course of study

JOZIC and SECRETARY TO THE DSS

(No. 13442)

Decided: 10 November 1998 by L.S. Rodopoulos.

The DSS sought to recover a debt of \$970.53 as allegedly overpaid newstart allowance (NSA) from 24 January to 13 March 1996. Jozic failed to attend the AAT hearing. As the AAT was unsuccessful in its attempts to telephone him, the hearing proceeded in his absence.