

claim for Widow B Pension may not be required (s.369(3)). However, the Tribunal concluded that the provisions of s.362A were overriding, and that therefore any deemed entitlement to Widow B pension had to arise before 20 March 1997 — clearly an impossibility in Gwiazda's situation as her husband died in October 1997. As she was neither qualified for, nor had she lodged a claim for, Widow B Pension before 20 March 1997, she could not be paid that pension. In addition the Tribunal concluded that as she had not yet reached age pension age she was not entitled to any other social security payment from Australia.

Formal decision

The Tribunal affirmed the decision under review.

[P.A.S.]

Compensation preclusion: special circumstances; lack of causal connection

SECRETARY TO THE DFaCS and ROMANOSKI
(No. 13529)

Decided: 10 December 1998 by J.T.C. Brassil.

Background

Romanoski was receiving newstart allowance (NSA) for the period March 1990 to 4 October 1995. Since 5 October 1995 he was receiving disability support pension (DSP). On 11 July 1993 he was injured in a motor vehicle accident. His compensation claim was settled for \$170,000 in December 1997.

The Department applied a preclusion period from 11 July 1993 to 19 July 1997, pursuant to s.1165 of the *Social Security Act 1991*.

The SSAT decided that there were special circumstances for the period up to 4 October 1995, which would justify the use of the discretion in s.1184(1), pursuant to which the Secretary may treat whole or part of the compensation payment as not having been made. The 'special circumstances' were that there was no causal connection between the pay-

ment Romanoski was receiving from Centrelink and the compensation payment.

The issue

The issue for the AAT was whether special circumstances existed which would make it appropriate to treat the compensation payments made prior to 5 October as if they had not been made.

The legislation

Section 1163(9) of the Act, inserted in 1993, specifically states that a causal connection is not necessary before a payment can be a 'compensation affected payment'.

Discussion

The AAT stated that:

'it is necessary to look further than the lack of a causal connection to determine whether appropriate special circumstances exist in respect of the respondent.'

(Reasons, para. 34)

The AAT accepted the views of Hill J in *Haidir v Secretary, DSS* (1998) 994 FCA 20 August 1998:

'Without putting too fine a point upon it, the purpose of the basic thrust of the legislation was to avoid a claimant being entitled to both social security benefits and benefits in the nature of income through lump sum payments.'

(Reasons, para. 36)

The AAT was sympathetic to the circumstances of Romanoski, who was in difficult circumstances due to ill health following the motor vehicle accident, and who had insufficient assets. However, the AAT must apply the tests in *Beadle* (1984) 20 SSR 210 as to special circumstances. Romanoski's circumstances, while 'not desirable for anyone to endure . . . unfortunately, are not uncommon or unusual or exceptional in our society'.

Formal decision

The AAT set aside that part of the SSAT's decision which found special circumstances to exist for the period 11 July 1993 to 4 October 1995.

[K.deH.]

Sole parent pension: assets test, loans to trust

CALLEJA and SECRETARY TO THE DFaCS
(No. 13576)

Decided: 23 December 1998 by W.G. McLean.

Background

Calleja lodged a claim for sole parent pension in 1997 in which she declared personal and business assets and income. The information declared showed that she was the sole shareholder and director of a family company as well as the beneficiary of a family trust of which the family company was the trustee. The trust accounts showed a loan by the beneficiary to the trust. The loan, some \$153,243, was made by Calleja to the trust in 1996.

The issue

The issues before the AAT were:

- what was the value of the loan for social security purposes; and
- was the loan an unrealisable asset and hence to be disregarded for purposes of the assets test?

The legislation

The *Social Security Act 1991* (the Act) provides that in valuing assets for pension or benefit calculations, loans are valued in terms of the amount that remains unpaid on them. This is provided for in s.1122 of the Act:

'If a person lends an amount after 27 October 1986, the value of the assets of the person for the purposes of this Act includes so much of that amount as remains unpaid but does not include any amount payable by way of interest under the loan.'

The Act makes provision for assets to be disregarded in circumstances of severe financial hardship and where it can be shown that an asset is unrealisable. This is provided for in s.1129 and s.1130:

'1130.(1) If s.1129 applies to a person, the value of:

- any unrealisable asset of the person; and
- any unrealisable asset of the person's partner;

is to be disregarded in working out the person's social security pension rate.'

The loan

By the time of the AAT hearing, certain amounts had been agreed between the parties as the value of Calleja's personal assets. The tax return for the trust in the