

s.52A(1) of the *Farm Household Support Act 1992*.

[M.C.]

## Compensation: lump sum preclusion period and special circumstances

**QX99C and SECRETARY TO THE  
DFaCS**

(No. 19990310)

**Decided:** 12 May 1999 by E.K. Christie.

### Background

The applicant was injured in an accident on 19 June 1991 and on 11 June 1998 received a lump sum settlement of \$100,000 for damages and \$35,000 for costs.

A preclusion period of 121 weeks was imposed, that is from 19 June 1991 to 12 October 1993 and an overpayment for an amount of \$15,554 was raised. This was affirmed by the SSAT.

The applicant argued that the preclusion period did not apply to him as there had been no loss of income — he had been receiving unemployment benefits both before and after the accident. This was not addressed by the AAT.

The applicant also argued that there were special circumstances in his case due to:

- legal and financial reasons.
- medical reasons.
- geographical reasons.

### Legal costs

The applicant stated that his costs were \$70,200 — more than twice that allocated in the order and over half of the entire payment. The applicant said that although there may have been overcharging, it was unlikely that a successful claim could be made against the lawyer to reduce these costs.

### Financial reasons

The applicant had \$8000 left and this had been set aside for emergencies. The remainder of the money had been spent on necessities and was not spent frivolously.

### Medical reasons

The applicant's condition was deteriorating. Constant medication was required

and special costs, such as for a wheelchair and special bed would also be necessary.

### Geographical reasons

The applicant lived on an island off the Queensland coast. Property values had dropped significantly. Attempts to sell had been unsuccessful and he would not be in a position to relocate on the mainland from the proceeds.

### The issues

Was this a situation that justified the application of s.1184? If so why?

Another issue raised was in relation to disclosure of information before the Tribunal. This was not an issue discussed in the decision.

### The law

Section 1184 allows the length of a preclusion period to be decreased in cases of special circumstances.

The AAT referred to *Reuben and Secretary, Department of Social Security* (AAT Decision 11879, 20 May 1997) and stated that it would 'consider the applicant's circumstances as a whole, i.e. by considering not only his financial situation, but also his health care needs and social conditions': Reasons, para. 30.

### Legal costs

The AAT found that legal costs totalled \$70,200 — twice the costs allocated and 52% of the lump sum.

The AAT relied on the case of *Secretary, Department of Social Security and Hulls* (1990) 57 SSR 766 quoting:

'That is not to say that s.156 ... will never be available for legal costs. The particular facts of the case might make them — the amount of them — a special circumstance.'

(Reasons, para. 30)

Also considered was the case of *Secretary, Department of Social Security and Haining* (1992) 62 SSR 960 where it was found that if legal costs are 'a very large portion' of the lump sum, then the 50% rule may not be appropriate: Reasons, para. 30.

### Financial reasons

The AAT concluded that it was reasonable to keep the \$8000 for emergencies, especially given the applicant's age and medical condition. Also a Statement of Financial Circumstances showed that weekly expenditure was 40% greater than income.

Ongoing costs for medical care were acknowledged together with a finding that the portion of the lump sum that had been spent was spent on necessities and not spent frivolously.

### Conclusion

The AAT concluded that the additional legal costs of \$35,200 were a special circumstance when considered in proportion to the lump sum received and in the context of the applicant's health needs, his financial circumstances, his social condition and the likelihood that the additional legal costs would not be recovered by the applicant.

The AAT stated:

'The Tribunal concludes that the set of circumstances, outlined above, would lead to an unintended and unfair result if the compensation preclusion period, as determined, were to be imposed. As the Tribunal pointed out in *Ivovic and Director-General of Social Services* (1981) 3 ALN 95, Section 1184 of the Act was specifically designed "... to allow the decision-maker the fullest opportunity to consider the particular circumstances of each case".'

(Reasons, para. 31)

It was ordered that the preclusion period be shortened with respect to the amount of the additional legal costs incurred, i.e. \$35,200.

It was further ordered that disclosure of information before the Tribunal be prohibited except to named persons and that the applicant be known as QX99C for the purposes of the review.

### Formal decision

The AAT varied the decisions by deciding that part of the \$100,000 settlement should be treated as having been not made because of special circumstances.

[R.P.]

## Assurance of support debt; special benefit discretion; waiver of debt

**STOJANOVIC and SECRETARY  
TO THE DFaCS (first respondent)  
and PASAGIC (second respondent)**  
(No. 19990304)

**Decided:** 24 February 1999 by S.A. Forgie, A.M. Brennan, I.R. Way.

The case involved an assurance of support debt. The AAT in exercising the discretion under s.739A(7) of the *Social Security Act 1991* (the Act) considered the Minister's Guidelines issued under s.739C of the Act. The AAT applied the