Aged pension: deemed income from proceeds of sale of residence

THOMAS and SECRETARY TO THE DFaCS (No. 13456)

Decided: 17 November 1998 by W. McLean.

Background

Mr and Mrs Thomas, both aged pensioners, entered a contract worth $552,000 for the construction of a new residence in South Yarra and subsequently sold their existing home for $800,000. Pending completion of their new home, Mr and Mrs Thomas invested the balance of the sale proceeds with the Commonwealth Bank and by purchasing Telstra shares. The DFaCS treated the balance of the sale moneys (approximately $525,000) as a financial asset the effect of which, applying the deemed income provisions, was that the Thomas' total income was such that their aged pensions were cancelled. In turn, this meant that they ceased to be eligible for concession cards. These decisions were affirmed by an ARO in January 1998 and by the SSAT in February 1998.

Mr and Mrs Thomas acknowledged that, in lieu of depositing the balance of the sale moneys in the Commonwealth Bank, they could prepay the vendor of their new home, or could deposit the moneys in their solicitors' trust account. However, they decided to not use either option as they needed the interest generated from the investment to offset the cost of renting the temporary accommodation required whilst their new home was completed.

The issue

Mr and Mrs Thomas contended that it was unfair that the temporary investment arising between the sale of their family home and the completion of the construction of another, be regarded as a financial asset under the deemed income provisions of the income test for pension purposes.

The law

The general meaning of 'income' is provided in s.1072 of the *Social Security Act 1991* (the Act):

> '1072. A reference in this Act to a person's ordinary income for a period is a reference to the person's gross ordinary income from all sources for the period calculated without any reduction, other than a reduction under Division 1A.
>
> Section 1077 of the Act provides that deemed income is to apply to financial assets held by members of a pensioner couple . . .'
>
> '1077.(1) This section applies to the members of a pensioner couple.
>
> 1077.(2) If one or both of the members of a couple have financial assets, the members of the couple are taken, for the purposes of this Act, to receive together ordinary income on those assets in accordance with this section.

However, the Act also provides that certain assets can be disregarded where the proceeds of the sale of the principal home are to be used to purchase a replacement residence. In this regard, s.1118 of the Act provides —

> 1118.(1) In calculating the value of a person's assets for the purposes of this Act, . . . disregard the following:
>
> . . .
>
> 1118.(2) If:
>
> (a) a person sells the person's principal home; and
>
> (b) the person is likely, within 12 months, to apply the whole or a part of the proceeds of the sale in acquiring another residence that is to be the person's principal home;
>
> so much of the proceeds of the sale as the person is likely to apply in acquiring the other residence is to be disregarded during that period for the purposes of this Act.'

Income from proceeds of sale

The AAT found that, although the Act allowed the proceeds of the sale of the family home to be disregarded from the calculation of the assets test for aged pension purposes:

> '. . . the whole of the income earned by the applicants from the proceeds of the sale is ordinary income. . . [T]he income from [the proceeds of the sale] is subject to the deeming provisions . . . while it continues to be held as a financial asset by the applicants'.

(Reasons, paras. 16-17)

Formal decision

The AAT affirmed the decisions under review.

[P.A.S.]

Conversion of investments: notification of change of investments

DANIEL and SECRETARY TO THE DFaCS (No. 13497)

Decided: 1 December 1998 by R.P. Handley.

Background

Daniel was granted an invalid pension in January 1987. He advised the DFaCS that his assets included two AMP 'roll-over investments'. In May 1989 Daniel switched $50,000 from an AMP Investment Linked Deferred Annuity into an AMP Capital Secure Deferred Annuity. Daniel advised the DFaCS of this change in June 1989.

On 8 January 1992, Daniel turned 65 years of age and was transferred to age pension. His annuity matured and on 10 January 1992, Daniel invested $60,000 in a term deposit with the Commonwealth Bank earning interest at 8.75%. The DFaCS received written notification of the changes in Daniel's investment in October 1992. In December 1995, the DFaCS decided that Daniel was entitled to arrears for the period 5 November 1992 to 27 October 1994 as his pension had not been adjusted to coincide with the changes to his investments. The DFaCS decided not to pay arrears for the period January to November 1992. Daniel then sought to review the rate of pension payable from June 1989. The DFaCS decided he was not entitled to any arrears prior to November 1992.

The issues

There were a number of issues before the AAT, namely:

- Were arrears of pension payable to Daniel for the period June 1989 to 5 November 1992?
- Was Daniel's AMP Capital Secure Deferred Annuity correctly assessed in terms of ongoing income from the date of purchase?
- Did Daniel's re-organisation of his AMP investments on 10 May 1989 constitute continuation of the same overall investment, conversion into an accruing return investment or the purchase of a new investment?