

week, earning in all \$1437. Mrs Langton supplied details of earnings, including payslips, to Centrelink, in December 1997. These earnings were the only earnings for the year and were below the relevant combined income free area of \$3120.

The issue

The Pension Rate Calculator for DSP is found in Module E under s.1064 of *Social Security Act 1991* (the Act), Step 1 of which states: 'Work out the amount of the person's ordinary income on a yearly basis'.

Centrelink contended that this required Mrs Langton's income during the period of her employment to be converted to an annual figure (that is, as if she had continued to earn at the same rate for a full year), which figure was then compared to the relevant income-free area. Using this approach, Centrelink raised an overpayment of \$253 in respect of both DSP and WP for the period 30 October 1997 to 27 November 1997. Mrs Langton contended that her earnings in her brief period of employment should have been treated as her yearly income, as she had no other earnings in the relevant year.

The decision

The Tribunal noted several cases where the matter of ordinary income on a yearly basis had been considered. In *Harris v Director-General of Social Security* (1985) 7 ALD 272 the High Court noted that '... an annual rate of income is not ascertained merely by extending to a year the income receipts of a shorter period without considering the period in respect of which the particular item of income has been received ...' and concluded that '... the means test requires that attention be given to the **actual income of the pensioner during the pension year...**' (emphasis added). Similarly, the Tribunal noted *Secretary, Department of Social Security v Moroney* (unreported 9 July 1998, Decision No 4108) and *Secretary, Department of Family and Community Services v Janet Rolley* (Federal Court, 20 June 2000). In the latter case the Federal Court accepted that:

... [t]he characterisation of some income by reference to its sources may require evaluative judgements as to whether or not it is to be treated as recurring income from which an annual rate may be extrapolated ... [A] one off payment for work unlikely to be repeated could be dealt with on the basis that it reflected the total income from employment likely to be derived in any period of twelve months.

Applying this approach, the Tribunal concluded that the earnings by Mrs Langton from one source of short-term employment should be regarded as her ordinary income on an annual basis.

Formal decision

The Tribunal determined that there were no overpayments of DSP or WP in the period in dispute.

[P.A.S.]



Lump sum compensation: preclusion period; special circumstances

SECRETARY TO THE DFaCS and NOLAN
(No. Q2000/157)

Decided: 9 May 2000 by K.L.Beddoe.

The issue

The Tribunal considered the appropriate amount to be taken into account in determining a preclusion period for benefit purposes, consequent upon a lump sum compensation payment.

Background

Nolan was injured at work in 1993 and received periodic compensation payments in 1993 and 1994 and then from February 1995 the disability support pension. In February 1995 the Department wrote to Nolan advising that repayment of benefits may be required if a compensation payment was made, and in May that year Nolan's solicitors sought the Department's advice as to estimates of recoverable amounts and preclusion periods based on a series of possible settlement amounts. Nolan's claim was settled in June 1999 for an amount of \$70,000 plus \$48,766 in respect of medical, hospital, rehabilitation and other expenses. The Deed of Settlement included an acknowledgment by the relevant Workcover authority that it waived its right to recover amounts of benefits it had paid to Nolan (which totalled \$48,766 as specified in the Settlement Deed).

The Department incorporated both the specified amounts in its determination of the relevant preclusion period. Nolan argued that he and his wife had considerable financial problems, but was unable to give full details as to the expenditure of the compensation payment, although he

had \$11,000 remaining at the time of the SSAT hearing of the matter in January 2000. The SSAT determined that, in calculating the preclusion period, any amount received by Nolan in excess of \$70,000 should be disregarded.

The law

The *Social Security Act 1991* (the Act) sets out the general principle that the compensation part of a lump sum compensation payment is to be 50% of the total payment (s.17). In turn, the compensation amount determines the period during which social security payments cannot be paid to the recipient (s.1165). However, pursuant to s.1184(1) the whole or part of a compensation payment may be treated as having not been made if it is considered appropriate to do so in the special circumstances of the case. If this discretion is exercised, the effect is that any preclusion period is reduced.

Discussion

The Tribunal heard evidence that Nolan was borrowing money from Centrelink and from charitable organisations during the time of the SSAT hearing (when his evidence was that some \$11,000 of the compensation amount was still available) and concluded that no weight could be given to his oral evidence. The Tribunal was unable to determine whether he was suffering financial hardship but, in the event, concluded that it was unnecessary to utilise the discretion afforded by s.1184 of the Act.

The Tribunal concluded that the appropriate figure for Department purposes was not the total amount payable as monetary consideration, but that amount received as payment on 'settlement of a claim'. This term could not include waiver of a charge not involving payments to the Department. Further, the Tribunal took the view that it would be contrary to the legislative intent if expenses in respect of medical, hospital and like treatment, incurred by the Workcover authority under its statutory obligations and in respect of which it had a right of recovery, should be deemed a portion of the compensation payment to Nolan.

The Tribunal concluded that the payment in settlement of Nolan's claim for damages was \$70,000 payable under the Settlement Deed, and that it was only this amount that should be used in calculating any preclusion period.

The formal decision

The Tribunal affirmed the decision under review.

[P.A.S.]