Administrative Appeals Tribunal Decisions

Age pension: principal home; absence exceeding 12 months

ATTARD and SECRETARY TO THE DFaCS
(No. 2000/1020)

Decided: 22 November 2000 by Dr J.D. Campbell.

Background

The Attards were receiving age pension when they advised Centrelink that they planned to return to Malta for more than 12 months.

Twelve months after departing, the Attards were advised that their rate of pension had been reduced as their house was no longer considered to be their 'principal home'. While they were away, their children lived in the home, rent free. The Attards only took clothes to Malta and they always intended to return to Australia.

When their pension was cut, they moved to live rent free with their sister-in-law. Mr Attard had $70,000 in an investment account in Australia.

The issue

The issue in this appeal was whether to assess the Attards' home as part of their combined assets due to their staying overseas for more than 12 months.

The law

Section 1118 exempts a person's principal home when calculating the value of a person's assets. Section 11(7) states as follows:

> A residence of a person is to be taken to continue to be the person's 'principal home' during:
>
> (a) any period (not exceeding 12 months) during which the person is temporarily absent from the residence.

Submissions

Two issues were argued:

- Subsection 11(7)(a) was presumptive and not exhaustive. Consequently if absence was more than 12 months, the circumstances should be considered to decide whether the residence remains a principal home;
- the hardship provision applied in this case as the Attards were unable to access their savings while they were in Malta.

Findings

The Tribunal found that there were a number of options open to the Attards once they were aware of the reduction in their income: they could have returned home, or accessed their savings. The Tribunal had

> ... great difficulty in making a finding of severe financial hardship, particularly where significant funds are not accessed, rent free accommodation is being provided to family members at Artarmon, and a decision to remain in Malta is maintained (all being discretionary decisions).

(Reasons, para. 22)

The Tribunal then considered the interpretation of s.11(7) (a). It concluded that the residence in question was at all times the Attard's principal home except for the period when the Act says that it is not.

In the Tribunal's view, after 12 months temporary absence, the residence ceases to be the principal home. The subsection was found to be definitive and exhaustive as it is for all the circumstances defined in s.11(7) of the Act.

> A contrary interpretation would in the Tribunal's view create a nonsense, and defeat the intention of s.11(7) of the Act to create clearly defined circumstances in which continuance of principal residence exemption status can be maintained despite the absence of residence.

(Reasons, para. 26)

> The Tribunal distinguished between the 'character' and 'status' of the principal home: the Tribunal finds that for the purposes of the Act, the home at Artarmon no longer enjoyed the character and status of the Applicants' principal home once the Applicants had been absent from residence for a period of 12 months, and that thereafter until their reoccupation, the Artarmon residence, while enjoying the character of a principal home, did not enjoy the status of a principal home within the defined circumstances of the Act ... in essence the Tribunal finds that the Artarmon home of the Applicants was deprived of its exempt status as a non assessable asset for the purposes of the Act.

(Reasons, para. 27)

Formal decision

The AAT affirmed the decision of the SSAT.

[R.P.]

Disability support pension: special circumstances

PRICE and SECRETARY TO THE DFaCS
(No. 2001/0177)

Decided: 9 March 2001 by D.P. Breen.

This was an appeal against a decision of an authorised review officer (ARO), as affirmed by the SSAT, that a compensation charge of $23,649.60 was owing to the Commonwealth.

Background

Price was injured at work in 1987 and 1990. He was finally put off work in 1994. He received sick leave from his employer, then workers compensation payments and finally received disability support benefit. He was a plaintiff in a class action against his employer and settled his compensation payment following mediation sessions. Price had, through his solicitors, obtained quotes for all of the expenses which would have to be repaid to organisations such as the Health Insurance Commission, Workers Compensation and Centrelink

When Price first went on sickness benefits he made sure that Centrelink was given all the information they required and was kept up-to-date with respect to any changes, including information about compensation. On 31 May 1999, Price's solicitors filled in an application form seeking a quote as to the preclusion period which would apply and any subsequent repayments which would have to be made. The solicitors failed to include information on the form as to the workers compensation payments which Price had received. Although Centrelink had the correct information on file, they acted only on the information on the form and informed the solicitors that the preclusion period would run from 30 March 1987 to 13 February 1994 and that there would be no compensation charge owing. Price agreed to settle his claim with his employers on the basis of the quote he was given by Centrelink.

In August 1999, when the solicitors officially informed Centrelink of the compensation settlement, Centrelink officially calculated the preclusion period referring to the information in their computers. They informed Price that