

Administrative Appeals Tribunal

Actual means test: assets of a partnership

**GREEN and SECRETARY TO
THE DFaCS
(No. 2001/0359)**

Decided: 2 May 2001 by D.W. Muller.

In general terms the maximum rate of youth allowance during a payment period is affected by the financial capacity of the youth's parents during the period. If the parents are self-employed or members of a business partnership their financial capacity is measured by their capacity to spend and save, their 'actual means'. Actual means will usually be reduced if there is a reduction in liquid assets during the relevant year, resulting in a higher rate of youth allowance.

The relevant parts of the *Social Security (Family Actual Means Test) Regulations 1998* (the Regulations) provide:

7. For these Regulations, the **savings** of a person include the following amounts:

- (a) ...
- (b) the person's share in any profit retained by a partnership of which the person is a member who has a substantial influence over whether partnership profit is distributed to:
 - (i) the person or a member of the person's family ...

...

15.(1) This regulation applies in working out the actual means, for an appropriate tax year, of a person who claims or receives youth allowance, and of each other person who is a member of that person's family.

(2) In working out actual means, the following amounts spent or saved in that tax year by the person are not included:

...

- (h) spending or saving from the proceeds of any liquidation of assets of the person held at the beginning of that year;

...

(3) In addition, in working out actual means for that tax year, the following amounts are not included:

...

- (b) an amount of assumed spending equal to the amount of any reduction in liquid assets of the person held at the beginning of that year and not accounted for by spending

of a kind mentioned in subregulation (2).

Green's parents were equal partners in a partnership which traded as Townsville Auto Parts, and his mother was a partner in a firm trading as Banks Bros Properties. During the year in question the liquid assets of the former partnership reduced by \$12,106, and his mother's portion of the reduction in liquid assets of the latter amounted to \$743. These amounts were spent by the family on living expenses.

Green's family spent \$42,117 on home, transport, education, general living expenditure and other things during the year. Other matters were subsequently taken into account and the actual means were worked out to be \$28,526. The issue was whether or not that figure should have been further reduced by the amounts, totalling \$12,849, taken from the accounts of partnerships.

Green contended that the total of the two amounts by which his parents' equities in the liquid assets of the partnerships were reduced, namely \$12,849, should not have been included in the actual means of the family. For the Secretary it was argued that the partnerships are legal entities which are separate from Mr and Mrs Green, so the loss of assets by the partnerships were not losses of assets of the parents.

The AAT held that a partnership is not a legal entity distinct from the partners. Partnerships in Australia do not have a legal personality that is distinct from the individual partners. It might be convenient to treat the partnership business and the affairs of the members independently for such purposes as accounting and taxation, but that does not create a separate legal entity. In a general partnership, all members retain the power (subject to the partnership agreement) to manage the enterprise, and all members are personally liable for partnership debts. Partnership is essentially contractual in its nature.

It noted that s.5 of the *Partnership Act 1891* (Qld) provides:

- 5.(1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.
- (2) But the relation between members of any company or association which is -

- (a) registered as a company under the *Companies Act 1863* or any other Act of Parliament for the time being in force and relating to the registration of joint stock companies; or
- (b) formed or incorporated by or in pursuance of any other Act of Parliament or letters patent, or Royal Charter;

is not a partnership within the meaning of this Act.

The AAT concluded that r.15 of the Regulations should have been applied to the partnerships' assets insofar as they affected the shares of Green's parents, because the partnerships' assets were the assets of those two persons. The savings of the partnerships would also have been their personal savings (subject to their share) pursuant to r.7. The Regulations should have been read as a whole.

Formal decision

The AAT set aside the decision under review and decided that for the relevant year the actual means of Green's family should have been reduced by a further \$12,849. It remitted the matter to recalculate the rate of youth allowance payable to Green for 1999.

[K.deH.]

Valuation of land: registered valuer or opinion of estate agent

**CLARKE and SECRETARY TO
THE DFaCS
(No. 2001/214)**

Decided: 21 March 2001 by M.D. Allen.

The issue

The issue in the matter was the appropriate valuation to be given to a parcel of land owned by Clarke. The effect of the accepted valuation was that the rate of Disability Support Pension (DSP) paid to Clarke would alter.

Background

Clarke owned farming and grazing property west of Kempsey in New South Wales, which was valued by a local estate agent at \$120,000 to \$125,000, but by the