

The Tribunal found in respect of the Guidelines there was nothing to indicate that S would 'react violently towards the children or the respondent; his identity is known and his paternity is beyond doubt; neither child was conceived through artificial insemination and there are no cultural considerations relevant' (Reasons, para. 22).

The Tribunal was not persuaded by VAD's submission that pursuing maintenance against S was unreasonable because it would have a harmful or destructive effect upon the children or that it would be disruptive of his marriage and he would be unable to maintain mortgage payments over his house.

The Tribunal was satisfied that it was reasonable for VAD to take action to obtain maintenance and that VAD having failed to take 'action' to obtain maintenance was not reasonable. The Tribunal stressed that this matter was not about whether S was liable to pay maintenance as that was a matter for another forum.

This review concerns the reasonableness of taking or failing to take action to secure payment of maintenance from the non-resident parent. Actually obtaining a payment of maintenance is not relevant.

(Reasons, para. 28)

The Tribunal found that an exemption against claiming child support was not appropriate in the circumstances of this application.

#### Formal decision

The decision of the SSAT made on 19 June 2001 was set aside, and in substitution it was decided that the decision of the ARO made on 3 May 2001 be reinstated.

[M.A.N.]

## **Preclusion period: special circumstances; severe incapacitating illness prior to compensation settlement**

**SECRETARY TO THE DFaCS and  
BULLOCK**  
(No. 2001/1016)

**Decided:** 12 December 2001 by  
J. Handley.

#### Background

Bullock was injured at work in April 1997, suffering injury to both shoulders. He sought compensation and settled his claim for \$205,000 plus costs in April 2000. A preclusion period was set from April 2000 to November 2004, during which Bullock was ineligible for a social security payment. The SSAT on appeal in June 2001 determined that a portion of the compensation amount (\$32,300) should be disregarded because of special circumstances, so reducing the preclusion period applicable to Bullock.

Shortly prior to the settlement, Bullock was diagnosed with haemochromatosis, the effects of which were described as 'truly horrific, debilitating and embarrassing'. The condition causes significant and painful effects on major joints, arthritis, liver enlargement and heart disease. Bullock required on-going treatment and two operations on his left ankle. Further operations on both ankles were anticipated. Because of his condition and the associated pain, Bullock was unable to remain in the two-storey house he and his wife had purchased, and had to buy an alternative single storey house, incurring \$23,300 in transfer fees, duties and interest costs. Further, because of his condition he was advised by his treating doctors to install air conditioning in his home (at a cost of \$4000), and also incurred \$5000 in additional medical costs not met by his medical insurance. The condition, and its effects, were quite unrelated to the injuries for which Bullock received compensation.

#### The law

The *Social Security Act 1991* (the Act) provides by s.1184(1) that:

For the purposes of this Part, the Secretary may treat the whole or part of a compensation payment as:

(a) not having been made; or

(b) not liable to be made ...;

if the Secretary thinks it is appropriate to do so in the special circumstances of the case.

In this matter, therefore, the question was whether the circumstances faced by Bullock could be said to amount to 'special circumstances'.

#### Discussion

The Tribunal noted the definition of 'special circumstances' in *Beadle and Director General of Social Security* (1984) 6 ALD 1 that, to be 'special' circumstances needed to be 'unusual, uncommon or exceptional ... [and must have a] particular quality of unusualness that permits them to be described as special'.

The Tribunal concluded that 'special circumstances' need not be confined to financial circumstances, that the consideration of what was 'special' involved application of a broad discretion without binding rules or rigidity (*Minister of Community Services and Health v Thoo* 1988 78 ALR 307), and that they should be found to exist if to do so would avoid injustice (*Springfield Nominees Pty Ltd v Bridgeland Securities Ltd* 1992 110 ALR 635). The fact that, if special circumstances were found to exist, Bullock would receive no immediate financial benefit (but rather would simply have the preclusion period reduced) was not determinative of the outcome as '... the discretion to determine whether special circumstances exist is not enlivened only when an applicant presents with financial insecurity' (Reasons, para. 28).

The Tribunal concluded that: 'Illness per se is not a special circumstance, but the consequences may be, for illness may not only involve the cost of treatment. It can as demonstrated in the present case, have far reaching and often dislocating consequences' (Reasons para. 30). The Tribunal found that special circumstances could be said to exist in Bullock's situation, and that an amount of \$32,300 (being the total of the costs of relocation, installation of air conditioning, and additional medical treatment) should be treated for pension purposes as not having been made. The effect of this was to reduce the applicable preclusion period.

#### The formal decision

The Tribunal affirmed the decision of the SSAT.

[P.A.S.]