

## **Compensation: preclusion period start date and special circumstances**

SECRETARY TO THE DFaCS and  
MANOCCHIO  
(No. 2003/86)

**Decided:** 31 January 2003 by S.P.  
Estcourt.

### **Background**

Manocchio was injured as a result of a work accident. He received a loss of earning capacity payment of \$6368 in relation to the period commencing 1 October 1999 on 30 September 2000.

He also received a lump sum payment of \$105,000. Centrelink imposed a lump sum preclusion period of 124 weeks commencing on 1 October 2000, the day following the last periodic payment.

On appeal, the SSAT decided that \$5021 of the payment of \$6368 should be treated as having not been made on the grounds of special circumstances. It made this decision on the basis that the payments did not reflect 12 months loss of income, rather approximately 11 weeks. It therefore concluded that the lump sum preclusion period of 124 weeks should commence on 17 December 1999.

### **The law**

The AAT found that s.1164 applied in relation to the amount of \$6368 and quoted the Federal Court case of *Secretary to the DFaCS v Reid* (2001) FCA 794 in support. Consequently, this lump sum was to be treated as though it was received as periodic compensation payments for the period it related to, which was not disputed.

The AAT also stated that the reduction of the converted periodic payment entitlement by the SSAT did not have the effect of backdating the last day of periodic payments. It stated:

Only the amount of the converted entitlement to a lump sum is thus altered, not the period by reference to which it was calculated. That period remains 1 October 1999 to 30 September 2000 [See s:1164(c) and (e)]. Thus, the commencement date of the 'lump sum preclusion period' remains the day following that day, i.e. 1 October 2000.

(Reasons, para. 12)

Having reached this conclusion, the Tribunal found no other grounds to justify reduction of the lump sum on the

basis of special circumstances and commented:

Nor, in my view am I entitled to find 'special circumstances' simply because the effect of the converted periodic payments entitlement postponed the operation of the 'lump sum preclusion period'.

(Reasons, para. 18)

### **Formal decision**

The AAT set aside the decision of the SSAT and reinstated the primary decision of the applicant.

[R.P.]

## **Compensation preclusion period: impact of Goods and Services Tax; new divisor; whether special circumstances exist**

SECRETARY TO THE DFaCS and  
DOWNS  
(No. 2003/174)

**Decided:** 21 February 2003 by J. Dwyer.

### **Background**

On 28 July 1995, the respondent had sustained injuries in a head-on vehicle accident. Proceedings were issued on his behalf, and on 10 September 1998, judgment by consent was entered in his favour. He was subsequently advised by Centrelink that a 'preclusion period' was applicable to his social security payments. It commenced on 29 July 1997 and will end on 12 January 2004.

In January 2002, the respondent sought review of the compensation preclusion period on the basis of financial hardship. The essence of the respondent's review submissions was that his investments were diminishing and his financial position had been adversely affected as a result of the increased cost of living since the introduction of the Goods and Services Tax (GST) on 1 July 2000.

### **The SSAT decision**

The SSAT had described its decision as follows:

On 13 September 2002 the Tribunal decided to vary the decision under review and send the matter back to the Chief Executive Officer of Centrelink with the direction that Downs' preclusion period be recalculated taking into account the income cut-off

amount of \$543.63 from 1 July 2000 and thereby reduce the preclusion period by 45 weeks to a total of 292 weeks.

The AAT set out the way the SSAT had gone about its task as follows:

26. Mr. Downs' case puts forward his diminishing financial position and the adverse effect on his investment income and increased cost of living since the introduction of the Goods and Services Tax (GST) on 1 July 2000. Mr Downs says that these problems seem to have arisen about two years after the settlement and were not foreseeable at the time.

27. The Tribunal accepts the information provided by Mr Downs which shows that his capital investment is diminishing, having lost \$4,175 in the past financial year. It is also accepted that the family income post-GST is significantly lower compared to pre-GST (\$14,864 for 00/01 compared to \$21,321 for 99/00).

28. In relation to the calculation of Mr. Downs' preclusion period, the Tribunal notes that the calculation used \$138,500 (50% of total settlement) as the economic loss component. The Tribunal notes that there is no specific evidence such as particulars of claim for the make up of the payment at the time of settlement. The figure of \$138,500 was determined in accordance with the provisions of sub-section 17(3) of the Act. The \$138,500 was divided by the relevant divisor at the time of settlement (\$410.00) to determine the 337-week period. The Tribunal agree that this calculation was correct.

29. The preclusion period of nearly 6 ½ years is lengthy and spans the period when GST was introduced from 1 July 2000. The Tribunal has reviewed the income cut out amounts and notes a substantial increase from 1 July 2000, which is, presumably, a response to the GST. The rate in March 2000 was \$428.40 and from 1 July 2000 increased to \$543.63.

After discussing the concept of 'special circumstances', the SSAT concluded:

45. In *SDFaCS v Allan* (2001), Heery, J. said that;

'Regard needs to be had to the purpose of s1184(1) which is to ameliorate what would otherwise be harsh and unfair application of a rigid formula. With a very large compensation sum the preclusion period might be very long. The longer the period, the greater the potential for unforeseen circumstances to create hardship.'

46. The Tribunal considers that Mr. Downs' circumstances are 'special' within the meaning of the legislation. The Tribunal believes that such a conclusion is consistent with *SDFaCS v Allan* (2001) and *Coxon and SDFaCS* (2001).

47. The Tribunal also finds that the circumstances are sufficient to justify a reduction of the preclusion period. Section 1184K does not specify a method to nominally reduce a preclusion period. The Tribunal con-