

## Age pension: insurance policies; whether maturity value is income or an exempt lump sum

SECRETARY TO THE DFaCS and  
McLAUGHLIN  
(No. 2003/298)

**Decided:** 31 March 2003 by  
C.R. Wright.

### The issue

In this matter the issue was whether the maturity value of insurance policies was to be regarded as income for age pension purposes in the year following the maturity of the policies.

### Background

In 1964 and 1977 McLaughlin took out two insurance policies, the first of which matured in February 2001 and which had a net maturity value (that is, the maturity payment less the premiums paid) of \$30,815. The second policy matured in April 2001 and had a net maturity value of \$6422.

McLaughlin lodged a claim for age pension (AP) in February 2001, at which time he advised Centrelink that the maturity value of the two policies was \$30,000 and \$15,000 respectively. He was advised by Centrelink that the net maturity payment would be assessed as income in the 12 months following their maturity, and this was implemented when he was granted AP from June 2001. This view was affirmed by an Authorised Review Officer in June 2001, but in March 2002 the SSAT took the alternative view that maturity value of the two policies was an exempt lump sum, save for an amount of \$286 which was equivalent to a bonus which accrued on the second policy in April 2001.

### The law

The qualifications for AP are contained in s.1064 of the *Social Security Act 1991* (the Act) which provides that the rate of AP is subject to the income test, which in turn requires calculation of the person's 'ordinary income' on a yearly basis. This term is defined in s.8(1) of the Act to mean:

'ordinary income' means income that is not maintenance income or an exempt lump sum.

The term 'income' is defined in s.8(1) to mean:

'income', in relation to a person, means:

- (a) an income amount earned, derived or received by the person for the person's own use or benefit; or
- (b) a periodical payment by way of gift or allowance; or
- (c) a periodical benefit by way of gift or allowance;

but does not include an amount that is excluded under subsection (4), (5) or (8) ...

whilst 'exempt lump sum' is defined in s.8(11) to mean:

**8.(11)** An amount received by a person is an *exempt lump sum* if:

- (a) the amount is not a periodic amount (within the meaning of subsection 10(1A)); and
- (b) the amount is not a leave payment within the meaning of points 1067G-H20, 1067L-D16 and 1068-G7AR; and
- (c) the amount is not income from remunerative work undertaken by the person; and
- (d) the amount is an amount, or class of amounts, determined by the Secretary to be an exempt lump sum.

Thus the key issue in this matter was whether the net maturity value of the policies (the 'profit' at maturity) was to be treated for AP purposes as 'ordinary income', or whether it should be regarded as an 'exempt lump sum'. In this latter regard, Centrelink contended that to be an 'exempt lump sum' not only must subparagraphs (a), (b) and (c) of s.8(11) be satisfied, but the Secretary must have determined that it be so characterised (s.8(11)(d)), which had not occurred in this case. In the absence of such a determination, Centrelink contended, the net maturity value of life policies remained assessable as income.

### The decision

The Tribunal considered the note to ss.8(11) of the Act, which indicated that the subsection was intended to apply to unexpected and non-anticipated (wind-fall) payments, and concluded that the legislative intent was to confine the category of exempt payments to such fortuitous receipts of moneys. Noting the power of the Secretary to make determinations regarding income and how income is to be regarded for pension purposes, the Tribunal concluded that '... any such determination [if made] must be consistent with the spirit and intent of the legislative scheme of the Act ...' (Reasons, para. 37).

However, the Tribunal noted that in fact no such determination had been made by the Secretary regarding life insurance policies.

The Tribunal concluded that, in the absence of such a determination — which the Secretary could have made but had not done so — Centrelink's decision to treat the net maturity value of the policies as income in the 12 months following their maturity, was correct.

### Formal decision

The Tribunal set aside the decision under review and reinstated the original decision as endorsed by the Authorised Review Officer.

[P.A.S.]

## Age pension assets test: is a religious item an asset?

SRAAAA and SECRETARY TO  
THE DFaCS  
(No. 2003/360)

**Decided:** 7 April 2003 by N. Bell.

### Background

In May 2001, SRAAAA received a compensation settlement of \$103,000 in respect of her husband's tragic death. She sent a total of US\$50,000, in May and June 2001, to her cousin in the United States, who is a Rabbi, for the purchase of a Sefer Torah. A Sefer Torah is a scroll of law and teaching handwritten by a professional scribe on parchment in Jerusalem only. It takes months to complete and is encased in pure silver. It is installed in the Holy Ark in Jerusalem and used only on holy days, Saturdays and Festivals.

The Department treated an amount of US\$50,000 as a gift for the purpose of assessing SRAAAA's rate of age pension. The SSAT decided that the value of SRAAAA's Sefer Torah, measured by its cost of purchase, was to be included in the calculation of her assets for the purpose of calculating her rate of pension.

### The issue

The issue was whether the Sefer Torah paid for by SRAAAA was an asset which should be taken into account in the calculation of the rate of her age pension.

### Legislation

Section 11(1) of the *Social Security Act 1991* (the Act) defines the word 'asset'. Section 11(1) provides, in part:

**11(1)** In this Act, unless the contrary intention appears: