

Federal Court Decisions

Rent assistance: whether a social security payment

SECRETARY TO THE DFACS v
LAURENT
(Federal Court of Australia)

Decided: 25 September 2003 by
Cooper J.

The Department of Family and Community Services ('the Department') requested review of the decision of the Administrative Appeals Tribunal ('AAT') that Laurent be paid rent assistance from the date it was cancelled on 27 September 1999 rather than from 4 December 2000.

The decision to pay rent assistance from 4 December 2000 was affirmed by the Social Security Appeals Tribunal but set aside by the AAT. The AAT found that rent assistance was an allowance under paragraph (c) of the definition of *social security payment*. Laurent had not been advised of the decision to cease paying rent assistance and so he was entitled to be paid from the date rent assistance ceased to be paid.

The facts

Laurent was in receipt of newstart allowance which included a component for rent assistance. In a letter dated 27 September 1999 Laurent was advised of the rate of his newstart allowance that did not include the rent assistance payment. A similar notice was sent to Laurent on 28 September 1999. Laurent continued to receive newstart allowance without the rent assistance payment. On 16 January 2001 Laurent raised with Centrelink the fact that he had not been paid rent assistance since August 1999. Centrelink decided to commence payment of rent assistance from 4 December 2000.

The law

Section 109(2) of the *Social Security (Administration) Act 1999* ('the Administration Act') provides:

(2) If:

(a) a decision (the original decision) is made in relation to a person's social security payment; and

(b) a notice is given to the person informing the person of the original decision; and

(c) more than 13 weeks after the notice is given, the person applies to the Secretary, under section 129, for review of the original decision; and

(d) the favourable determination is made as a result of the application for review;

the favourable determination takes effect on the day on which the application for review was made.

The term *social security payment* is defined in s.23(1) of the *Social Security Act 1991* ('the Act') as:

social security payment means:

(a) a social security pension; or

(b) a social security benefit; or

(c) an allowance under this Act; or

(e) any other kind of payment under Chapter 2 of this Act; or

(f) a pension, benefit or allowance under the 1947 Act.

The definition in the Act also applies to the Administration Act. Chapter 2 of the Act covers pensions, benefits and allowances but does not include rent assistance. Rent assistance is paid according to the rate calculator modules attached to the sections that deal with the rate of payment of various pensions, benefits and allowances.

Social security payment

Centrelink argued that rent assistance was merely a component of newstart allowance and not a payment in its own right. Laurent argued that rent assistance was a separate social security payment and fell under the category *allowance*.

Cooper J noted that rent assistance did not exist independently as it could not be paid except as part of a benefit. Rent assistance has no statutory operation except as part of the module in the benefit rate calculator.

Rent assistance is not a discrete sum of money payable under the Act as a pension, benefit or allowance. It is a notional amount to be added to a person's maximum basic rate of pension, benefit or allowance to help cover the cost of rent. What is in fact payable and paid is the Newstart Allowance in a sum calculated in accordance with Benefit Rate Calculator B (s.1068) and that is the payment to which s.109(1)(a) of the Administration Act applies.

(Reasons, para. 30)

The definition of *social security payment* must be understood in the context of the Act.

Further, definitions are not to be treated as substantive provisions creating rights, obligations or interests under the Act.

(Reasons, para. 31)

Definitions have no effect except in the interpretation of the Act itself and cannot be used to create a payment not provided for in the Act.

Formal decision

The Federal Court set aside the decision of the AAT and referred the matter back to the AAT to decide according to law.

[C.H.]