

Assets test: valuation of shares

HORNYA-STASI and SECRETARY TO THE DFACS (No. 2002/1284)

Decided: 31 December 2002 by M. Carstairs.

The issue

The issue in this matter was the valuation of share holdings for the purposes of the asset test for disability support pension (DSP) and carer payment (CP).

Background

Hornya-Stasi and her late husband were shareholders in a private company which in turn held a 20% share in Acan Plastics (Acan), which shares had been purchased in February 2000 for \$450,000. There was some evidence to the Tribunal that this purchase price was too high, and that the goodwill in Acan had been overstated. In August 2001 Hornya-Stasi and her husband claimed CP and DSP respectively, but both applications were rejected because the total value of their assets (including their Acan shares, valued by Centrelink at \$467,056) was above the relevant asset limits. At the time of the applications, the asset limit beyond which reduced pension payments were possible was \$200,500 with no pension payments once assets reached \$426,500 in value. On review, Centrelink affirmed the decision, as did the SSAT in March 2002.

At the Tribunal, evidence was produced of various valuations of the Acan shares, ranging from \$150,000 to \$170,000 in one instance, and a second valuation of \$70,000. The evidence of one chartered accountant was that as a 20% shareholding gave no right of decision making in the company, nor any control over dividends, it was worth less than its proportional amount in real terms. Similarly, there were various mechanisms proposed to the Tribunal for the valuing of shares for pension purposes. These included the net asset backing method of valuation, and the assignment of value based on capitalisation of maintainable earnings — that is, the future maintainable profits of the company taking into account variability or risk reflecting the nature of the company being valued.

The law

The provisions for calculating pension rates are included in s.1064 of the *Social Security Act 1991*, in particular s.1064-G1 which sets out the assets test

and requires that assets be valued in order to establish the pension rate to be paid.

The Tribunal noted that assets tests are based on the net market value of the assets concerned, but that market value will not necessarily reflect the purchase price. Rather '... the market value of assets is the price upon which the willing purchaser and the willing but not anxious seller would reach an agreement' (Reasons, para. 18), a view supported by the Victorian Supreme Court in *MT Associates Pty Ltd v Aqua-Max Pty Ltd* [2000] VSC 78.

The Tribunal accepted that a range of valuation methods was open to it, and determined that in this matter the appropriate approach was to assess the value of the Acan shares on the basis of that company's performance over recent years and the value of its goodwill which, given its trading performance, was valued at nil. Taking all the evidence into account, the Tribunal determined that the appropriate value to be assigned to the 20 shareholding in Acan was \$163,656.

The decision

The Tribunal set aside the decisions and remitted the matter to Centrelink for re-assessment of eligibility on the basis that the asset value of the shares in Acan Plastics was \$163,656.

[P.A.S.]

Drought relief payments: income test; whether losses incurred on one venture can be offset against profits from another venture

DONGES and SECRETARY TO THE DFACS (No. 2002/01)

Decided: 2 January 2003 by D. Muller.

The issue

The issue in dispute before the Tribunal was whether it was permissible for the applicant to offset losses made in his farming enterprise against profits from his pump business in the assessment of

his income for the purpose of the income test for drought relief payments.

The facts

The applicant and his family operated a business partnership that included a farm in Biloela that was the subject of the drought relief payments (the farm) and a pump business known as Donges Pump Service (the pump business) which involved the establishment and maintenance of irrigation systems such as windmills, water pumps and bores. On the advice of their accountant, the applicant and his wife had completed claim forms and review forms, on the basis that their income was arrived at by offsetting the farm losses against the pump business income. It was not disputed that the farm was virtually unsaleable during the drought and that the profit from the pump business went into the maintenance of the farm, after which there was very little left over for the applicant and his wife to purchase basic necessities. Also not disputed was the fact that the pump business operated the farm and that the same equipment, tools and personnel were used for both ventures.

Consideration of the issues

The Department contended that the profits from the pump business should stand as the applicant's income for the purposes of the income test, and that the losses from the farming enterprise should be ignored. In support of its submission, the Department relied on the judgment of the Full Federal Court in *Secretary, Department of Social v Garvey* 19 ALD 348 where the Court held that the recipients of social security benefits should not expect the government to prop up uneconomic businesses and that they should divest themselves of such businesses before they look for income support.

The Tribunal rejected the Department's submission, and decided that the present case could be distinguished from the case of *Garvey* for at least two important reasons. Firstly, the applicant's pump business and his farm business were in fact a total business enterprise with two limbs, as each limb depended for its support on the other. The pump business used the farm as its base and it used all the farm tools, equipment, truck and personnel. In the case of *Garvey*, an invalid pensioner had sought to offset losses from his negatively geared investment properties against the income of his wife from school teaching, the income producing enterprise having no connection whatsoever with the venture incurring losses. Secondly,