

that for both periods, including the period after 1 September 1997, the overpayments arose as a result of fraud.

The Tribunal therefore concluded that the debt survived Weiss' bankruptcy as the debt arose as a result of fraud.

Garnishee

The Tribunal went on to consider the debt recovery action by way of garnishee. The Tribunal found that all the necessary procedural steps were met and that the garnishee action was lawful.

Special circumstances

The final issue considered by the Tribunal was special circumstances waiver. The Tribunal found this was not available as Weiss had knowingly made a false statement or failed to comply with a provision of the Act.

Formal decision

The AAT varied the decision under review and decided that Weiss owed a debt to the Commonwealth of \$20,361.37 for the period January 1996 to 17 March 1998.

[R.P.]

Age and wife pensions assets test: is money held by Public Trustee for investment an asset?

PERRONE and SECRETARY TO THE DFaCS
(No. 2004/775)

Decided: 22 July 2004 by M.J. Allen.

Background

On 10 October 2002 a Centrelink officer made a decision to cancel the Perrones' age pension (AP) and wife pension (WP) respectively because their combined assets exceeded the allowable maximum value of assets.

In 1996 Mr Perrone was receiving AP and Mrs Perrone was receiving WP. Mr Perrone, who was 64 at the time, was involved in an accident and suffered serious head injuries. In August 2002 proceedings instituted on Mr Perrone's behalf were settled by consent judgment, and a sum of \$500,000 was paid to the Public Trustee for Western Australia.

On becoming aware of the terms of settlement Centrelink reviewed the Perrones' eligibility for benefits they had been receiving and calculated the value of their combined assets as approximately \$550,000 (\$500,000 held on behalf of Mr Perrone by the Public Trustee and \$50,000 of other financial assets). That amount exceeded the then allowable value of assets for a home-owner couple, which was \$447,500. Accordingly, a decision was made to cancel both AP and WP payments.

There was no dispute that the amount of damages awarded to Mr Perrone did not include any component for past or future economic loss for the purposes of s.17 of the *Social Security Act 1999* ('the Act') and therefore no preclusion period for the payment of benefits applied.

The issue

The issue was whether the decisions to cancel the payments were correct having regard to the assets and income tests.

The decision

An 'asset' is defined in s.11 of the Act as meaning 'property or money (including property or money outside Australia)'. The word 'property' is not defined in the Act but the Perrones' conceded that the amount held by the Public Trustee on behalf of Mr Perrone was property, and therefore an asset, for the purposes of the Act unless it was an asset that could be disregarded under s.1118.

The Tribunal was satisfied on the basis of the decision in *Melbourne v Secretary, Department of Social Security* (1998) 85 ALR 291, that this was an appropriate concession.

Section 1118 of the Act sets out a substantial number of asset types that can be disregarded when calculating the value of a person's assets. The only asset category the Perrones' identified as possibly applicable in this case was in s.1118(1)(n), which provides that the value of a person's asset is to be disregarded if it is 'personal property ... [that] is designed for use by a disabled person; and the person ... is disabled'.

The Perrones' contended that the \$500,000 held by the Public Trustee is personal property of Mr Perrone and that he is disabled. It was also acknowledged that it required a 'strained construction' of paragraph (n), to say that the amount of money was 'designed for use by a disabled person'.

Centrelink contended that paragraph (n) should not be interpreted broadly in a way that would include the \$500,000 and that it should be restricted to items of physical personal property — such as a wheelchair, motor vehicle or other apparatus or appliance — designed specifically for physical use by a disabled person.

On the assumption that the money held by the Public Trustee was personal property of Mr Perrone and that he was disabled for the purposes of the Act, it was the Tribunal's opinion that the construction of paragraph (n) advanced by the Perrones placed far too much strain on the words of the paragraph. Section 1118 deals with a number of different types of assets, including interests in real property; certain types of interests in other arrangements affecting homes; investments; proceeds of an insurance policy claim or compensation payments received for the loss of buildings, plant and personal effects; and items such as a motor vehicle in certain circumstances. Paragraphs (n) and (p) deal with personal property that is 'designed for use by a disabled person' or is 'modified so that it can be used by a disabled person' respectively.

The Tribunal considered that in the context in which those paragraphs appear they refer to items such as wheelchairs, motor vehicles, or other type of appliances that are either specifically designed for physical use by a disabled person or are modified so that they can be used by such a person. The Tribunal considered that the paragraphs referred to items of physical personal property of that kind and could not be interpreted to include such things as a financial asset of the type in question.

The Tribunal found that the sum held by the Public Trustee was an asset of the Perrones and its value could not be disregarded pursuant to s.1118 of the Act. Accordingly, its value had to be taken into account when calculating the combined asset values for asset testing purposes.

Formal decision

The Tribunal affirmed the decision under review that the rate of AP and WP payable to the Perrones, having regard to their combined assets, was nil and therefore AP and WP were not payable to them.

[S.P.]