

Supporting parent's benefit: maintenance is 'income'

MALARBI and DIRECTOR-GENERAL OF SOCIAL SECURITY
(No. V82/459)

Decided: 29 November 1983
by R. Balmford.

Guisseppina Malarbi had been granted supporting parent's benefit after separating from her husband.

She was unable to occupy the matrimonial home (because it was occupied by tenants) so the Family Court ordered her husband to pay \$50 a week maintenance to cover the cost of rental accommodation. The DSS treated this maintenance as Malarbi's income and reduced the level of her benefit. She asked the AAT to review this decision.

The legislation

Section 18 of the *Social Security Act* defines income as

... any personal earnings, moneys, valuable consideration or profits earned, derived or received by that person for his own use or benefit from any source whatsoever

Maintenance for accommodation is 'income'

Malarbi argued that it was unfair to treat the maintenance as income: it was no more than the provision of alternative accommodation; and, if she had been able to occupy the matrimonial home (rather than receive the maintenance), her benefit would not have been reduced at all.

The AAT referred to an earlier decision in *Hoy* (1983) 15 SSR 150, where

maintenance payments had been treated as income even though the payments were intended to cover the husband's share of mortgage payments on the matrimonial home.

The AAT adopted that decision. While the Tribunal sympathised with Malarbi's argument, the Act required benefits to be calculated 'with regard to income, not with regard to assets'. Malarbi's maintenance 'was "moneys received by her for her own use or benefit" and, thus, as income, was properly taken into account in the calculation of her supporting parent's benefit': Reasons, para. 8.

Formal decision

The AAT affirmed the decision under review.

Unemployment benefit: share dividend income

HUGGINS and DIRECTOR-GENERAL OF SOCIAL SECURITY
(No. S83/41)

Decided: 23 December 1983 by I. R. Thompson.

Paul Huggins had been paid unemployment benefit from 13 April 1982. On 6 September 1982 he told the DSS that in the previous two weeks he had received a \$15 annual dividend on shares. The DSS treated that amount as income received in that two week period. Under the stringent income test then in force, the DSS reduced the unemployment benefit payable to him for that period by \$4.50.

After an unsuccessful appeal to an SSAT Huggins applied to the AAT for review of that decision.

Statements by DSS

When Huggins had first applied for unemployment benefit he had been told by officers of the DSS that any share dividends would be treated as if received pro rata each week throughout the year.

However, the DSS was subsequently advised by the Attorney-General's Department that the *Social Security Act* did not permit this 'spreading out' of share dividends, which had to be treated as income for the period when received.

Dividends from shares: income over a year?

Section 106(2) of the Act provides:

Where a person is entitled to receive income by way of periodical payments made at intervals longer than one week, that person shall be deemed to receive in each week an amount proportionate to the number of weeks in each period in respect of which he is entitled to receive payment.

Did this section apply to the applicant? The AAT examined the nature of share dividends and concluded:

... the entitlement of a shareholder to receive a dividend usually does not arise until after the dividend has been declared. He cannot, I consider, properly be described as 'a person entitled to receive income by way of periodical payments'.

Another provision of the Act, s.114(1A)

(since repealed) did not assist Huggins: it provided that a person's unemployment benefit should be reduced if the person's 'income exceeds \$6 per week'. There was no justification in that section for 'spreading' receipts of income.

Case for *ex gratia* payment

Although the DSS had been correct in reducing the rate of Huggins' benefit, the AAT considered that this was a proper case for an *ex gratia* payment of \$4.50. The applicant had relied upon the information supplied by the DSS and, if correct advice had been given, he could have disposed of his shares and avoided any reduction of his benefit:

He may well have a valid equitable claim against the Department for loss suffered as a result of negligent mis-statement, although the cost of pursuing such a claim would be out of proportion to the quantum of the loss.

(Reasons, para. 17)

Formal decision

The AAT affirmed the decision under review.

Age pension: family trust

ROBERTS and ROBERTS and DIRECTOR-GENERAL OF SOCIAL SECURITY
(No. N82/329)

Decided: 15 November 1983 by C.E. Backhouse, M. McLelland, and G. Grant.

On 24 August 1979, Mr Roberts applied for an age pension and his wife applied for a wife's pension. On 7 February 1980 the DSS granted pensions to the Roberts, adjusted to take account of income from a family trust.

The Roberts asked the AAT to review

the decision to take that income into account.

The trust arrangement

The family trust had been established in July 1979, when Mr and Mrs Roberts transferred several investment properties and building society accounts to the trust. The trustees were Mr and Mrs Roberts and the beneficiaries of the trust were named as Mr and Mrs Roberts, their son and their descendants. According to the trust deed, the trustees had complete discretion to pay the investments or income of the trust to any of the beneficiaries. However, Mr Roberts told the AAT that the intention was that

the proceeds of the trust fund would be paid only to their son.

The legislation

Section 47(1) of the *Social Security Act* provides:

If, in the opinion of the Director-General, a claimant or a pensioner has directly or indirectly deprived himself of income in order to qualify for, or obtain, a pension, or in order to obtain a pension at a higher rate than that for which he would otherwise have been eligible, the amount of the income of which the Director-General considers the claimant or pensioner has so deprived himself shall be deemed to be income of the claimant or pensioner.