Formal decision

The AAT affirmed the decision under review.

[Editor's note: It should be noted that the original investment in this matter was made prior to 1 January 1988 and the subsequent transfer to the government securities portfolio occurred after that date. This raises the issue of the difference in the way such investments are treated under the Act. The AAT did not address this issue and did not indicate whether the investment was to be treated as a pre or post 1 January 1988 investment.

For a discussion of related issues, see the Annotated Social Security Act 1991, Federation Press, 1992, para [1075.02].]

[A.A.]

Assets test: valuation of land

TORV and SECRETARY TO DSS

(No. P91/339)

Decided: 18 June 1992 by M.D. Allen, C.A. Woodley, and D.D. Coffey.

This was an appeal against the valuation of a farm upon which a dwelling house was situated. The valuation was conducted for the purpose of an age pension. The land consisted of 2 titles, Portion 117 being 22.66 hectares and Portion 116 being 16.196 hectares. The Australian Valuation Office valued the property on the basis of its 'highest and best use as 2 individual home sites'. They purported to have considered a number of comparative sales in the area to arrive at a valuation of $227 000. From this figure the valuer subtracted the independent valuation of the applicant's dwelling house and curtilage of 2 hectares (s.11(5) of the *Social Security Act* 1991 and its 1947 equivalent). The valuation of the house and 2 hectare curtilage was $127 000, leaving a nett asset for age pension purposes of $100 000.

The facts

The AAT found as a fact that the land consisted of only approximately 2 hectares of arable land and the remainder was 'eroded bush, best described as brown snake and rock wallaby country'. The Tribunal found that sub-division was unlikely to be approved by the local Council for various reasons.

The Tribunal heard evidence by a local real estate agent to the effect that the land was unimproved and that its roughness precluded it being sold as a rural home site. The real estate agent was of the opinion that it was likely to sell, if at all, as a 'bush block'. The Tribunal accepted the agent's opinion that the applicant would have had considerable difficulty in selling the land at the time of the application.

The Tribunal heard evidence that the comparative sales relied on by the valuer were of improved blocks and of blocks that were substantially bigger than the applicant's. It was found that there were no true comparative sales to the applicant's block by which it was possible to estimate the value of the applicant's property.

The issue

The issue was the appropriate method of valuing the applicant's land, particularly in the absence of any true comparative sales.

The legislation

As the applicant's original application for a pension was lodged prior to the commencement of the 1991 Act, the AAT determined that the appropriate law to apply was that contained in the 1947 Act. The Tribunal did not refer to the provisions of the 1947 Act and determined the matter by reference to general valuation principles.

The AAT's decision

The AAT approved of the overall approach of valuing the whole of the land inclusive of the dwelling house and 2 hectares curtilage, and then deducting the value of the house and 2 hectares curtilage (*Reynolds* (1987) 35 *SSR* 444 was cited).

In relation to the lack of comparable sales the Tribunal observed:

- One of the sales alleged to be a comparative sale was a mortgagee sale. This fact alone did not entirely dismiss it from consideration although its difference in size and zoning rendered it non-comparable.
- It was difficult to draw conclusions as to the value of unimproved blocks from comparable sales of improved blocks.
- In the absence of any true comparable sales, less reliable comparisons between properties of different sizes and degrees of improvement would have to be relied on with appropriate adjustments.
- The evidence of the local real estate agent with his knowledge of local conditions, even though he was not a qualified valuer, was useful.

Formal decision

The AAT determined that the value of the applicant's property was $205 000 and that the value of the land curtilage was $126 000 and remitted the matter to the DSS to re-determine the applicant's pension.

[A.A.]

Overpayment: marriage-like relationship

SECRETARY TO DSS and MOORE

(No. 8098)

Decided: 9 July 1992 by J.A. Kiosoglous.

The DSS decided to cancel the sole parent's pension being paid to Moore because she was living in a marriage-like relationship. Subsequently DSS raised an overpayment of $8360.60 of sole parent's pension paid between 10 March 1990 and 14 March 1991.

The SSAT set aside this decision, substituting a decision that no marriage-like relationship existed. The DSS requested that the AAT review this decision.

The facts

Moore rented a house from the South Australian Housing Trust (SAHT) from 29 October 1988. Her son Scott was born on 20 April 1990 and she was paid sole parent's pension from 10 May 1990. At some point after Moore rented the house but before she became pregnant, Mr Dennis Webber moved in.

The issues

The AAT set out the issues it must address as:

(a) whether Moore was living in a marriage-like relationship during the relevant period and thus not a 'single person';

(b) whether there was a recoverable debt;

(c) whether all or part of the debt should be waived.

The law

The substantive law relevant in this matter was set out in the 1947 Act.