Failure to comply with activity agreement

Alderton confirmed she signed an agreement to attend Employment Plus every Monday and Wednesday. She advised the Salvation Army that she could not attend on 2 June 1999 but then did not attend as requested the following day. She was unable to give a reason for this non-attendance.

Previous breaches

The decision under review was the imposition of an eight-week non-payment penalty because this was said to be Alderton's third activity test breach. The Tribunal noted there was no evidence before it about Alderton's previous breaches and requested such evidence. Following the hearing the DFaCS submitted documentation which showed that one breach had been waived. The Tribunal said:

> The breach with which the Tribunal was concerned, being Ms Alderton's failure to attend Employment Plus on 3 June 1999, was a second breach within the two year period commencing 9 December 1998 and that therefore a rate reduction of 24 per cent of NSA for 26 weeks should be imposed on her rather than an 8 week non-payment period under sections 644A and 644AE of the Act. This concession by the party joined highlights the errors which may occur if decision-makers on review do not satisfy themselves that each provision under the Act has been complied with. No assumptions should be made.

(Reasons, para. 21)

Formal decision

The decision under review was set aside. The matter was remitted to the Secretary to the DFaCS for reconsideration in accordance with directions that Ms Alderton failed to take reasonable steps to comply with her Newstart Activity Agreement on 3 June 1999 and she therefore did not satisfy the activity test under paragraph 593(1)(b) of the Act. It was Ms Alderton's second activity test breach and an activity test breach rate reduction period applied to Ms Alderton under s.626(1A) of the Act.

[M.A.N.]

Farm Family Restart Grant: definition of 'farmer'

CATTO and SECRETARY TO THE DFaCS (No. 2001/354)

Decided: 1 May 2001 by B.G. Gibbs.

The issue

The sole issue to be determined by the Tribunal was whether Catto was a 'farmer' within the *Farm Household Support Act 1992* (the Act).

Background

Catto ceased work and claimed disability support pension in July 1993. He transferred to age pension in February 1995. He lodged a claim for Farm Family Restart Grant (FFRG) on 22 July 1999. He advised at that time that no crops had been planted on his farm since 1992, that his stock had been sold and his leases relinquished, and that his son was running stock on the remaining lease. The SSAT determined in July 2000 that the Department's rejection of his claim for FFRG was correct, on the basis that he was not a 'farmer' within the Act.

The law

Section 8B of the Act sets out the qualification for farm help income support. In particular, the section requires that the person be a 'farmer' and that the person must have '... been a farmer for a continuous period of at least two years immediately before the period [in respect of which the claim for farm help income support is lodged] ...' (s.8B(c)).

Section 3(2) of the Act defines 'farmer' to mean:

> ... a person who
>
> (a) has a right or interest in the land used for the purposes of a farm enterprise; and
>
> (b) contributes a significant part of his or her labour and capital to the farm enterprise; and
>
> (c) derives a significant part of his or her income from the farm enterprise.

The issue for the Tribunal was whether Catto fell within these legislative provisions for the two years prior to his claim for FFRG.

Did Catto contribute a significant part of his labour and capital to the farming enterprise?

In 1997 Catto owned a farm made up of two parcels of land. In May 1997 he entered an agreement with his son Glenn that they would both farm the property by growing lucerne and running ewes for sale. A pump would be installed on the property to increase its viability. Glenn would receive the gross proceeds from the farming activities, would meet all expenses associated with the property, and then he and Catto would disperse any net funds. On behalf of Catto, Glenn paid some $7800 in outstanding rates over the property.

Catto was limited in the physical work he could do due to pain associated with his hips. Nevertheless the evidence to the Tribunal was that Catto and Glenn had together rebuilt the pump on the property in August 1997; that they had together actually farmed the property in 1998-99, including planting, watering, cutting and raking the lucerne; they had jointly worked on spreading of fertiliser and on weed control efforts; and jointly contributed to various activities associated with raising of sheep. Evidence was tendered of expenditure by Catto on purchase of farming plant and equipment over some years, and of the proceeds of sale of lucerne, wool and lambs in 1998 and 1999. Catto estimated that overall he contributed about 40% and Glenn about 60% of the labour on the farm. Catto argued that he did no other labour for reward (other than work the farm, to the extent that he was able) and that thus all of his labour was contributed to the farm enterprise. He further argued that his labour component was significant if a notional value was attributed to the hours he worked on the farm.

The Tribunal accepted that Catto had a 'right or interest' in the land, and accepted the evidence that he contributed a significant part of his labour and capital to the farming enterprise.

Did Catto derive a significant part of his income from the farming enterprise?

Catto submitted that the sale of lucerne, ewes and lambs had generated income to be shared jointly between himself and his son and that the gross amount earned exceeded his age pension entitlement. The Tribunal accepted that he earned a significant part of his income from the farming enterprise. In this respect the Tribunal noted that the Centrelink Manual stated at paragraph 3.1.5 as follows:

> (a) When determining an application gross income figures should be used; and
>
> (b) Where the farm is not generating a sufficient level of income to meet the living costs of the farm family, the labour contribution or effort becomes paramount.

Formal decision

The Tribunal set aside the decision under review and substituted the decision that Catto met the definition of 'farmer' in the Act and that he had been a farmer for at least two years before the date of his claim, and therefore met the requirements for FFRG.

[P.A.S.]

Rent assistance: ineligible homeowner

CROKER and SECRETARY TO THE DFaCS (No. 2001/321)

Decided: 20 April 2001 by H. Hallowes.

Background

Croker lived in a property owned by a company that was also the trustee of the R.A. Croker Family Trust. He lived in a flat with other buildings on the site including the home of his estranged wife. He transferred his share in the company to his estranged wife on 14 July 1999 for a consideration of $1. His estranged wife became the sole director of the company. Croker claimed that he rented the property from the company. Under the trust deed, Croker was a beneficiary, the guardian and appointer.

The issues

The issue was whether Mr Croker was eligible for rent assistance from 14 July 1999, the date on which he resigned as a director of Crolok Tools and Dies Pty Ltd (the company).

Legislation

Section 1064-D1 of the *Social Security Act 1991* (the Act) provides that:

> An additional amount to help cover the cost of rent is to be added to a person's maximum basic rate if:
>
> (a) the person is not an ineligible homeowner; and
>
> ...

Pursuant to s.13(1) of the Act, an 'ineligible homeowner means a homeowner ...' and s.11(4) and (8) of the Act provide:

> **11(4)** For the purposes of this Act:
>
> (a) a person who is not a member of a couple is a **homeowner** if:
>
> (i) the person has a right or interest in the person's principal home; and
>
> the person's right or interest in the home gives the person reasonable security of tenure in the home; and
>
> ...
>
> **11(8)** If a person has a right or interest in the person's principal home, the person is to be taken to have a right or interest that gives the person **reasonable security of tenure** in the home unless the Secretary is satisfied that the right or interest does not give the person reasonable security of tenure in the home.

Ineligible homeowner

Croker submitted that he had never acted as appointor in his life and had no intention of doing so in the future. He paid rent to his estranged wife every four weeks.

The Department contended that as Croker was an appointor under the trust, he could exercise sufficient powers to give him reasonable security of tenure over the property. The Department referred to the case of Re *Johnston and Repatriation Commission* AAT 508, 31 May 1994, a number of other relevant Tribunal decisions and the decision of the Family Court *In The Marriage of David Latimer Shaw and Ramona Shaw* (1989) FLC 92-030

The Department argued that Croker had considerable indirect influence over any decision of the trustee (the company of which his estranged wife was the sole director), although he was precluded from appointing himself as trustee or any company which he controlled. In acting as an appointor, Croker was obliged to consider the beneficiaries, so in effect he had to consider himself and, in deciding to transfer his interest in the company to his estranged wife for $1, he must have felt confident that she would not act against his interests.

The Tribunal found that Croker was a homeowner because he had an interest in his principal home, which gave him reasonable security of tenure. The Tribunal did not foresee that he would have to leave the property where he had lived for a long time.

> He was prepared to give up his directorship of the company, and to part with his interest in the company for only $1. The Tribunal is satisfied that he has confidence that the company will act in his interests, but, if it appears that that situation will not continue, the Tribunal is satisfied that Mr Croker is astute enough to act quickly and to exercise his power as appointor.

(Reasons, para. 13)

Formal decision

The decision under review was affirmed.

[M.A.N.]

Lump sum preclusion: special circumstances; unfairness or injustice

SECRETARY TO THE DFaCS and HOOPER (No. 2001/243)

Decided: 27 March 2001 by R.P. Handley.

Background

Hooper suffered work injuries between April 1985 and January 1997 when she stopped work. In July 1998 she was awarded compensation of $735,306. The economic loss component of this amount was $477,935 and $123,764 was repaid to GIO for periodic workers compensation payments made before the court order.

In October 1998 Hooper claimed age pension. Centrelink decided that she was precluded from receiving payments between 6 July 1998 and 20 January 2015.

The preclusion period was calculated on the basis of $354,220 (the economic loss component of the settlement less the amount repaid to GIO). This amount was divided by the divisor at the time of settlement ($410) and the period commenced on the day after the weekly workers compensation payments ceased (6 July 1998).

This decision was reviewed by the Social Security Appeals Tribunal (SSAT), which decided that special circumstances applied in this case to reduce the preclusion period to end on 30 June 2006.

The arguments

The submission presented by the Department was that the SSAT had mistakenly reduced the period by 'undertaking a balancing exercise to achieve a fair and equitable result'.

The Department conceded that Hooper's financial situation was straitened, but was not exceptional. Equally, her health was not exceptional. Hooper had unencumbered assets (house and car), she had money in a bank account and would receive further money after the settlement of costs from past legal proceedings.

The submissions presented on behalf of Hooper were that:

- There had been no 'double dipping'.