

landmark federal court decision

In a recent landmark decision the Federal Court has given a broad interpretation to the criteria which enable newly arrived residents access to Special Benefit during their first two years in Australia. The decision may have a beneficial impact on many newly arrived residents who are in dire poverty due to being denied Special Benefit.

Social Security legislation provides that a newly arrived resident may only receive Special Benefit during their first two years in Australia if they have had a “substantial change in circumstances”. Prior to the Federal Court’s ruling, decision makers believed that a substantial change in circumstances was limited to matters concerned solely with a person’s finances. The Federal Court’s decision enables decision makers to take into account non financial factors, such as a person’s physical and emotional health.

c l i e n t ’ s s t o r y

Our clients had left their country of origin late in their lives and had been accepted as refugees in New Zealand. In New Zealand they had a friend who helped them with their day-to-day activities as they could not speak English. Unfortunately the friend later left New Zealand and our clients were unable to manage on their own. They felt vulnerable and frightened. Acquaintances told them they should move to Australia as this country has a telephone interpreter service and a larger community of people from the client’s home country, including doctors who could speak the client’s language.

Upon arrival in Australia they discovered that they were not entitled to Social Security payments because of the two-year waiting period. After they arrived their health deteriorated markedly and they required more medical care. They had no family in Australia and were reliant upon acquaintances and charities for help.

t h e a a t

In order to have the two-year waiting period for Special Benefit terminated early, it is necessary to show that the person “suffered a substantial change in circumstances beyond the person’s control”.

The Centre argued at the Administrative Appeals Tribunal (AAT) that our clients had suffered two changes: the first when their friend left New Zealand and could no longer help them and the second when their health deteriorated in Australia. The AAT ruled against our clients, maintaining that the deterioration in health was not a relevant change in circumstances because it had not changed their capacity to be financially self-sufficient. This was because they were too elderly to seek employment upon arrival in Australia.

t h e f e d e r a l c o u r t

The Federal Court appeal dealt with the issue of whether a change in circumstances had to be one with a financial impact, in particular whether a deterioration in physical and emotional health can be a relevant change.

The Federal Court decided that the Act did not confine the nature of a relevant change in circumstances, and “the deterioration in bodily and emotional health” could constitute a “substantial change in circumstances” for the purposes of the exemption from the two-year waiting period.

“Realities of experience in life dictate that there is a substantial difference on the one hand between dependency of aged persons upon others such as relatives or friends or charitable organisations for free accommodation and sustenance, where such aged persons nevertheless enjoy tolerable health, and on the other hand where physical and emotional health of aged persons in such situations is materially deteriorating and is likely to continue to do so. In the kind of circumstances just postulated, ordinary human experience and perception dictates that aged persons in such circumstances of constrained dependency undergo the trauma of loss of dignity, helplessness and despair.”

In its reasons the Court relied on the Full Bench decision in *Secara's* case which included in the meaning of “substantial change in circumstances” something that would have “happened to that person...of sufficient significance to no longer impose upon that person the newly arrived resident’s waiting period”.

The Court also said that it would be surprising if Parliament had intended a result which would prevent persons arriving without the means to be financially self-sufficient to ever qualify for the exemption from the two-year waiting period no matter what befell them.

The clients are now in receipt of Special Benefit. ▲