

Centrelink status of pensions – the Reiter case

The salutary lesson to be learned from this case is that before any action is taken in respect of superannuation pension, always consider whether the pension is subject to Centrelink “pension grandfathering”.

In this case, Dr Reiter, the Applicant, while not receiving an age pension (due to the means tests), had been granted a Seniors Health Card. The Applicant commenced an account-based pension in November 2014. As the Applicant held a Seniors Health Card on 31 December 2014, his entitlement to the Card was grandfathered by not having the account-based pension included in the incomes means test which is used to determine entitlement to the Card.

In April 2017, the Applicant wished to top up his pension. Consequently, he rolled back the account-based pension to accumulation phase, merged the roll back amount with the top up amount and then, commenced a new account-based pension on 17 April 2017.

In January 2019, the Applicant’s entitlement to the Seniors Health Card was re-assessed and his entitlement to the Card was cancelled.

Centrelink justified the cancellation of the Seniors Health Card on the basis that the April 2017 pension was a new pension and that the November 2014 pension had ceased. Consequently, in determining the entitlement to the Card, deemed income from the April 2017 pension was now counted in applying the Seniors Health Card income test. Despite the pension provider retaining the same name and account number as applied to the November 2014 pension when the provider issued the April 2017 pension, Centrelink held that the roll back of the pension terminated the pension and, in any event, the new pension had a materially greater pension balance.

The Applicant then referred the card cancellation decision to the Administrative Appeals Tribunal which upheld Centrelink’s cancellation decision and the basis for the decision.

Could the outcome have been different? In short, “Yes”. If the November 2014 pension had not been rolled back but continued and had the top up amount been used to commence a second account-based pension, the outcome would have been different. In this situation, the November 2014 pension would have continued to be disregarded for the purposes of applying the Seniors Health Card incomes test with only the much smaller second pension being assessed. In this case, the Applicant would not have “failed” the incomes test for the Seniors Health Card.

The lesson is very simple. If an account-based pension commenced before 1 January 2015, then the pension may be subject to the very valuable privilege of being grandfathered for the purposes of the income tests for the age pension or Seniors Health Card. This is a privilege which should not be lost without careful consideration.

The decision of the Administrative Appeals Tribunal upholding Centrelink's cancellation decision is reported as [2020] AATA 2212.

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