[2015] AATA 337

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| Division | **GENERAL ADMINISTRATIVE DIVISION** |
| File Number | 2014/2120 |
| Re | Alex Pakzad |
|  | APPLICANT |
| And | Secretary, Department of Employment |
|  | RESPONDENT |

# Decision

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| Tribunal | **Deputy President F J Alpins** |
| Date | **18 May 2015** |
| Place | **Melbourne** |

The decision under review is affirmed.

[sgd]........................................................................

**Deputy President F J Alpins**

**SOCIAL SECURITY** – newstart allowance – compensation payment for injury at work – preclusion period during which allowance not payable – discretion to treat whole or part of compensation payment as not having been made - whether “special circumstances” – whether appropriate to exercise discretion

**Legislation**

*Social Security Act 1991* (Cth) ss 17, 23, 1169, 1170 and 1184K

*Social Security (Administration) Act 1999* (Cth) s 179

**Cases**

*Beadle v Director-General of Social Security* (1985) 7 ALD 670

*Boscolo v Secretary, Department of Social Security* (1999) 90 FCR 531

*Groth v Secretary, Department of Social Security* (1995) 40 ALD 541

*Haidar v Secretary, Department of Social Security* (1998) 52 ALD 255

*Kertland v Secretary, Department of Family and Community Services* (1999) 95 FCR 64

*Kirkbright v Secretary, Department of Family and Community Services* (2000) 106 FCR 281

*Secretary, Department of Employment & Workplace Relations v Barrington* [2006] FCA 527

*Secretary, Department of Employment and Workplace Relations v Homewood* (2006) 91 ALD 103

*Secretary, Department of Family and Community Services v Sammut* (1999) 58 ALD 691

*Secretary, Department of Social Security and Darcy Ah Sam* [1994] AATA 254

*Secretary, Department of Social Security v Hodgson* (1992) 37 FCR 32

*Secretary, Department of Social Security v Smith* (1991) 30 FCR 56

*Secretary, Department of Social Security v Thompson* (1994) 53 FCR 580

*Trimboli v Secretary, Department of Social Security* (1989) 17 ALD 201

# REASONS FOR DECISION

**Deputy President F J Alpins**

**18 May 2015**

# INTRODUCTION

1. This application for review concerns the respondent’s decision dated 15 August 2013 to reject the applicant’s claim for newstart allowance, on the basis that payment of that allowance is precluded until 2018 because of compensation he has received, by operation of Part 3.14 (ss 1160 – 1185) of the *Social Security Act 1991* (Cth) (the “Act”).
2. The essential issue before the Tribunal is whether the circumstances of this case constitute “special circumstances” within the meaning of that expression as employed in s 1184K of the Act and, if so, whether the discretion conferred bythat provision should be exercised, so as to treat the whole or part of the compensation payment made to the applicant as not having been made.

# LEGISLATION

1. Section 1169 of the Act provides that a “compensation affected payment” is not payable during a “lump sum preclusion period” to a person who receives a lump sum compensation payment. Section 17(1) of the Act defines the term “compensation affected payment” to include a “social security benefit”, which is in turn defined in s 23(1) to include “newstart allowance”.
2. Section 1170 prescribes the method for calculating a lump sum preclusion period and for ascertaining when it begins (and ends). The length of the preclusion period is calculated by dividing “the compensation part of a lump sum compensation payment” (defined in s 17(3)(a) of the Act) by the “income cut-out amount” (worked out using the formula in s 17(8) of the Act).
3. Section 1184K of the Act provides that, for the purposes of Part 3.14 thereof:

“the Secretary may treat the whole or part of a compensation payment as ... not having been made ... or ... not liable to be made ... if the Secretary thinks it is appropriate to do so in the special circumstances of the case.”

# FACTUAL AND PROCEDURAL HISTORY

1. The applicant, Mr Alex Pakzad, is 27 years old. He has lived in Australia since 2004, having been born in Afghanistan. Mr Pakzad and his wife, who is also 27 years old, have four children, born in 2009, 2011, 2013 and 2014; the ages of their children therefore range from 6 to infancy.
2. In December 2006, Mr Pakzad was injured at work. He ceased his employment in January 2008. Mr Pakzad received weekly compensation payments until 23 April 2012; on 24 April 2012 settled his compensation claim for a lump sum in the amount of $550,000. Mr Pakzad gave oral evidence that, following the payment of legal fees, he was left with about $500,000 to $510,000 of that sum.
3. At around this time, Mr Pakzad also received a payment from a superannuation fund, in the amount of about $224,000. It appears from a Centrelink form signed in April 2012 that the superannuation payment received by Mr Pakzad was an insured benefit paid on the basis that he was totally and permanently disabled. I note in passing that the respondent submitted that Mr Pakzad’s receipt of the payment from his superannuation fund might affect his entitlement to newstart allowance in any event (see s 1073 of the Act), but as that raises issues beyond the confines of the decision under review, I say no more about it.
4. By separate correspondence dated 10 May 2012, Centrelink informed Mr Pakzad and his solicitors who had acted for him with respect to his settlement that, given the lump sum compensation payment to which he was entitled, he was subject to a preclusion period, which had been calculated as commencing on 24 April 2012 and ending on 27 August 2018 (the “preclusion period”).
5. It is convenient to interpolate references to material contained in Centrelink records at this point. Centrelink records establish that on 15 May 2012 Mr Pakzad telephoned Centrelink because his solicitors had advised him to obtain a copy of “letters regarding his future preclusion period”. Centrelink advised him that they had been sent out recently but he said he had not received them and that he would therefore visit Centrelink to obtain copies for him and his solicitors.
6. Shortly after receipt of his compensation payment, Mr Pakzad purchased land in Pakenham for the sum of $235,000, on which to build a home.
7. Centrelink records also establish that the following exchange occurred between Mr Pakzad and a Centrelink officer on 28 May 2012, when Mr Pakzad telephoned Centrelink about the cancellation of social security payments to his wife:

“Customer advised that he needs to pay the builder who is building their house and everything is set but he will not be able to pay for all the expenses if his wife’s payments have been cancelled. [Ad]vised customer that I was concerned that he has a preclusion period until 2018 but he is using his funds to build his house. Advised customer that this will not change his preclusion period. Customer stated that this has nothing to do with his payments and he understands that he will still have his preclusion period until 2018 even though he is using the funds to build their home etc. Customer was concerned that his wife’s payments have been cancelled along with the [Family Tax Benefit].”

1. On 31 May 2012, Mr Pakzad signed a letter prepared by Centrelink acknowledging that, given his lump sum compensation payment, the preclusion period specified above applied and he would therefore not be eligible to receive income support payments during that period. The signed letter was lodged with Centrelink on 4 June 2012.
2. Despite those communications in May, Centrelink records also establish that on 11 February 2013 Mr Pakzad telephoned Centrelink and inquired about applying for newstart allowance but was advised that he could not do so during the preclusion period. There is also a notation of a detailed exchange between officers that Mr Pakzad was to be informed that if, as he had just advised, he bought a house, “his preclusion period would still stand”, although it is unclear from the records whether any of that discussion was conveyed to Mr Pakzad; accordingly, I have not taken the record of the conversation between the officers into account.
3. In May 2013, Mr Pakzad again telephoned Centrelink about claiming a newstart allowance. The Centrelink records indicate the following exchange occurred:

“Cust[omer] queried why he could not apply for an income support payment now his payout had been spent. Cust[omer] adv[ised] that he had bought a house and paid for his wife to travel overseas. He adv[ised] that he did not feel that he had spent this money irresponsibly”.

1. It is convenient to note at this point that Mr Pakzad gave oral evidence that he paid a total of about $430,000 to build his house. Accordingly, he spent a total of about $665,000 on his home, which comprised most of the total of his compensation payment and his payment from his superannuation fund.
2. On 30 July 2013, Mr Pakzad lodged the claim for newstart allowance which has resulted in this application for review. As I have said, that claim was rejected. The decision to reject Mr Pakzad’s claim was affirmed by a Centrelink authorised review offer; consequently, Mr Pakzad appealed to the Social Security Appeals Tribunal (the “SSAT”), which affirmed the respondent’s decision. This application for review therefore concerns the respondent’s decision as affirmed by the SSAT (s 179(2) of the *Social Security (Administration) Act 1999* (Cth)).

# RELEVANT PRINCIPLES

1. Relevant authorities establish the following principles governing the construction and application of s 1184K of the Act, some being derived from its predecessors or analogues.
2. Section 1184K involves a two-stage decision-making process. It is first necessary to determine whether the circumstances in question constitute “special circumstances” within the terms of the provision. If so, it is then necessary to consider whether the discretion conferred bythat provision should be exercised, so as to treat either the whole or some part of the relevant compensation payment as not having been made or as not liable to be made (*Secretary, Department of Family and Community Services v Sammut* (1999) 58 ALD 691 at [21] per Branson J; *Boscolo v Secretary, Department of Social Security* (1999) 90 FCR 531 at [19] per French J).
3. The question of whether circumstances are “special circumstances” is to be determined according to the particular facts of any given case (*Beadle v Director-General of Social Security* (1985) 7 ALD 670 at 674 (Full Court); *Trimboli v Secretary, Department of Social Security* (1989) 17 ALD 201 at 209 per Hill J; Woodward and Beaumont JJ agreeing; see also *Secretary, Department of Employment and Workplace Relations v Homewood* (2006) 91 ALD 103 at [35] per French J).
4. In *Beadle* at 674, the Full Court said that “[t]he phrase ‘special circumstances’, although lacking precision, is sufficiently understood in our view not to require judicial gloss”. The word “special” in the context in which it is employed in s 1184K constitutes “a direction to the decision-maker that the discretion it constrains is not lightly to be enlivened” (*Boscolo* at [18] per French J). For there to be “special circumstances”, the case must involve something unusual or different (ibid at 281-282; *Groth v Secretary, Department of Social Security* (1995) 40 ALD 541 at 545 per Kiefel J), but it need not be an extremely unusual, uncommon or exceptional case (*Boscolo* at 281-282, citing *Secretary, Department of Social Security v Hodgson* (1992) 37 FCR 32).
5. Unfair, unintended or unjust consequences of the imposition of a preclusion period will constitute special circumstances (*Groth* at 545; *Haidar v Secretary, Department of Social Security* (1998) 52 ALD 255 at 264 per Hill J, citing *Beadle* at 673-674). Section 1184K is an ameliorative provision which allows for the harshness of the imposition of a preclusion period to be alleviated in appropriate cases involving special circumstances (ibid at 263-264; *Kirkbright v Secretary, Department of Family and Community Services* (2000) 106 FCR 281 at [22] per Mansfield J).
6. In accordance with general principles, the broad discretion granted under s 1184K of the Act is to be exercised bona fide and for the purposes for which it is conferred as discerned by reference to the policy and purpose of the Act (*Trimboli* at 209 per Hill J; *Beadle* at 674). The legislative history with respect to the manner in which social security payments might be affected by the receipt of a lump sum compensation payment reveals that “the basic thrust of the legislation was to avoid a claimant being entitled both to social security benefits and benefits in the nature of income through lump sum payments” (*Haidar* at 263 per Hill J). As Merkel J consonantly stated in *Kertland v Secretary, Department of Family and Community Services* (1999) 95 FCR 64 at [1], the “relevant provisions operate to prevent ‘double payment’ by depriving a person of an entitlement to social security benefits payable under the Act during the relevant period (the preclusion period)”.
7. I note in that regard that “special circumstances” may therefore exist where there is in fact no such “double payment”, for example because in the particular circumstances there is no relationship between the compensation payment giving rise to the preclusion period and the social security benefits in question (ibid, citing *Secretary, Department of Social Security v Smith* (1991) 30 FCR 56).
8. The “application of the discretion is not confined to cases in which all or part of a compensation payment has been dissipated or lost” (*Homewood* at [44] per French J). However, the expenditure of compensation money on an asset after becoming aware of a preclusion period would often tell against a finding of special circumstances (*Secretary, Department of Employment & Workplace Relations v Barrington* [2006] FCA 527 at [33] per Heerey J.
9. It is relevant to consider general factors such as the mental health and social conditioning of the applicant (*Secretary, Department of Social Security v Thompson* (1994) 53 FCR 580at 586).
10. In any event, as will be apparent from the principles set out above, each case turns on its own facts, which are to be considered holistically.

# EVIDENCE

## Applicant’s evidence

1. As I have indicated, Mr Pakzad gave oral evidence; he was cross-examined. Under cross-examination and in response to questions posed by the Tribunal, Mr Pakzad described the circumstances in which he purchased the land and in which his house was built. He said that he decided to buy the land at Pakenham and to build a house there after seeing an advertisement on television around the time he received his compensation payment. Mr Pakzad said that it is important given his cultural background for him and his family to own their home. Mr Pakzad and his family previously lived in modest rented accommodation.
2. It took about seven months for the house to be built. It is a large double-storey four-bedroom home with two living areas, a few bathrooms, a study and a double garage. Mr Pakzad still owns his home outright.
3. Mr Pakzad also gave evidence that he had expected and attempted to find further employment after receiving his compensation payment and that he continues to make such efforts; however, to date he has been unsuccessful, despite undertaking some retraining for that purpose. Mr Pakzad’s wife does not work.
4. Mr Pakzad gave evidence that, as he has now spent his compensation and superannuation payments and has not been successful in finding further employment, his financial circumstances are very difficult. He relied on a Statement of Financial Circumstances he prepared for Centrelink dated 24 February 2014, in which he stated, referring to social security benefits his wife receives (which then amounted to $1,298.54 per fortnight) that those benefits are “not enough for 5 people and most of the time we strugle [sic] to pay the bills or buy food and we run out of money to pay for other things needed”.
5. I note that since that, since that statement was prepared, Mr Pakzad’s circumstances have changed in two relevant respects. First, following the birth of his fourth child, he and his dependants now comprise six people. Furthermore, as a consequence, his wife now receives social security benefits totalling $1,664.78 per fortnight, comprising a carer allowance ($121.70), a carer payment ($644.00) and family tax benefits (totalling $899.08).
6. Mr Pakzad’s medical expenses related to his injury are met by Workcover. He owns a car (a Toyota Corolla). Mr Pakzad does not have any savings. However, he also has no debts, save for about $2,000 which he owes to his brother. His brother has not demanded repayment of that loan and Mr Pakzad said that he will repay it when he is able to do so.
7. The materials before the Tribunal establish that, during the period July 2012 to November 2013, Mr Pakzad travelled overseas on four occasions, for periods ranging from about 10 days to about two months. Based on Mr Pakzad’s oral evidence, most if not all of those trips were to visit his wife’s family in Afghanistan. I note that the last trip was for two months; I infer from the materials before the Tribunal and his oral evidence that Mr Pakzad was accompanied by his wife for the duration of that trip. It appears that on one of the occasions to which I have referred, he accompanied his wife for part of a period she was absent from the country. Mr Pakzad said that his brother had paid for his airfare, although it was unclear whether that was on only one or on each occasion. Mr Pakzad explained that his trips overseas were for his rehabilitation, given his psychiatric illness, which I address later in these reasons.
8. When he was asked why he has not considered selling his house and buying a more modest home in order to release funds for his living expenses, Mr Pakzad said in substance that that option was unacceptable to him, given his psychiatric illness, and also to his wife, as she had had to suffer the consequences of that illness. Mr Pakzad said that his wife had threatened to leave him if the house was sold.
9. Mr Pakzad also gave evidence about the consequences of his workplace injury, particularly with respect to his resultant psychiatric condition. He described the symptoms of the serious depression he has suffered and continues to suffer, which include episodes of hallucinations.

## Medical evidence

1. I turn now to the medical evidence in that regard. Mr Pakzad has been a patient of Dr Mark Schiff, psychiatrist, since August 2008. In a medical report prepared by Dr Schiff in April 2012 (for the purpose of a disability support pension claim made by Mr Pakzad which was apparently withdrawn when he settled his compensation claim), Dr Schiff stated that in August 2008 he had diagnosed Mr Pakzad as suffering from two conditions as a consequence of his workplace injury. He said that the condition which had the greatest impact on Mr Pakzad’s ability to function was his “major/psychotic depression”, recording with respect to Mr Pakzad’s history that “[p]atient developed severe psychotic depression with suicidal ideas in the context of major work accident/unremitting pain”. He enumerated various symptoms of that condition, including cognitive difficulties.
2. Dr Schiff also opined that Mr Pakzad suffered from a “chronic (severe) pain disorder” as a consequence of his workplace injury, which affected his upper body (particularly his arms) and abdomen, and also “associated hernia with post-operative complications”.
3. In a report which is dated 3 March 2013 but which appears from the balance of the report and from other materials to have in fact been prepared on 3 March 2014, Dr Schiff reiterated in substance that Mr Pakzad continues to suffer from major depression with psychotic features as a consequence of his workplace injury and resultant “unremitting neuropathic pain syndrome”.
4. In that report, Dr Schiff spoke highly of Mr Pakzad’s character. With respect to Mr Pakzad’s purchase of his home, Dr Schiff said that “I can clearly recall and supported Alex and his family in making the decision of using the small amount that was paid out to him by Workcover to use as deposit and purchase for his first Australian home”. He pointed out that Mr Pakzad intended to resume employment after the settlement of his compensation claim and opined that his failure to obtain further employment and thus provide for his family and “ongoing financial trouble ... is the primary cause of his psychiatric disability now”.
5. In conclusion, Dr Schiff said “I wish to advocate for my patient by writing this letter”, in effect making submissions as to why Mr Pakzad’s claim for newstart allowance should be accepted and opining in that context that such acceptance could significantly improve Mr Pakzad’s psychiatric condition.
6. In a supplementary report dated 24 November 2014, Dr Schiff noted that Mr Pakzad had been admitted as a psychiatric inpatient in 2010, when he had undergone treatment in the form of electroconvulsive therapy (“ECT”) procedures, and in 2011. He was also admitted in May 2013. His last admission was in March 2014, when he underwent successive ECT procedures.
7. Dr Schiff noted that, around the time of Mr Pakzad’s purchase of his home in 2012, Mr Pakzad was taking various medications, that he consequently was sedated and tired and that Mr Pakzad complained that his focus and concentration were affected. Dr Schiff said further that, at that time, Mr Pakzad was “continuously and significantly depressed with intermittent psychotic features”. He said that his notes indicated that Mr Pakzad was “often confused” at that time.
8. Dr Schiff stated in his supplementary report that Mr Pakzad had consulted him about how he might spend his compensation money. His report corroborates Mr Pakzad’s oral evidence that his mother and brother had declined to assist him in that regard, saying that it was a decision for him to make. Dr Schiff stated that he had supported Mr Pakzad’s decision to purchase his house given the significance to Mr Pakzad of providing a home for his family in the context of his cultural background.
9. In conclusion, Dr Schiff opined that “both the severity of his psychotic depression as well as acute or chronic pain and the cognitive side effects of the cocktail of medications that he had to take ... would negatively affect his ability to make decisions” at the time Mr Pakzad received his lump sum compensation payment and further that “the ECT course that he had prior to 2012 would have further affected him cognitively”.

# CONSIDERATION

1. There was no real dispute that the preclusion period applies and that its commencement date and length has been properly calculated. In any event, I am satisfied that it does and it has, in accordance with ss 1169 and 1170 of the Act.
2. I turn now to question of the application of s 1184K of the Act. After carefully considering the evidence before the Tribunal in its totality, I have concluded that the circumstances of this case do not constitute “special circumstances” for the purposes of s 1184K of the Act. Accordingly, the statutory discretion is not enlivened. Even if it were, I do not think it is “appropriate” for the purposes of that provision to exercise the discretion.
3. In my view, one issue that arises for consideration in this case is whether Mr Pakzad’s psychiatric condition affected his ability to comprehend that he was subject to the preclusion period in question and its import. Another related issue is whether his psychiatric condition impaired his decision-making capacity and thus infected his decision to purchase his home, and moreover to expend almost the entirety of his compensation payment and superannuation payment on that purchase. In considering those issues, I have paid particular attention to Mr Pakzad’s oral evidence and the reports prepared by Dr Schiff, and also to the records of Mr Pakzad’s communications with Centrelink.
4. I accept that, at the time Mr Pazkad received his compensation payment and decided to purchase a home, he suffered from a serious psychiatric illness, from which he continues to suffer. I note that Mr Pakzad’s oral evidence about his understanding at the time that he purchased his land and built his house that he was subject to a preclusion period and thus unable to receive newstart allowance during that period was inconsistent. Nevertheless, after considering his evidence in its entirety and the documentary evidence, including not only the letter of acknowledgement he signed but also the records of his communications with Centrelink, I infer that at all relevant times he was aware of the existence and significance of the preclusion period. I am not satisfied that his understanding in that regard was compromised in any way by his psychiatric condition.
5. Despite that understanding, Mr Pazkad spent not only all of his compensation payment but also all of the payment he received from his superannuation fund shortly after receiving those amounts, almost all of it being spent, as I have indicated, on the purchase of his land and the building of his home. Although Dr Schiff’s opined that Mr Pakzad’s capacity to make decisions would have been compromised by his psychiatric condition, that statement is general in nature. Given that Dr Schiff was evidently aware of Mr Pakzad’s intention to spend his compensation payment and supported his decision to use it to purchase a house, I infer that Dr Schiff considered that Mr Pakzad was capable of making such a decision, despite his psychiatric condition.
6. I am not satisfied that the making of that particular decision was impaired or otherwise affected in any way by Mr Pakzad’s psychiatric condition. I say that not merely because the compensation payment was not dissipated or lost but also because Mr Pakzad’s evidence about his purchase of the land and the building of his home reveals that the transaction was in fact a carefully considered one, which occurred over a period of time. By way of example, under cross-examination and in answer to questions posed by the Tribunal, Mr Pakzad’s evidence indicated that he had given careful thought to matters such as choosing the floor plan for the house and its fittings, which was largely done together with his wife. Indeed, his evidence revealed that he had exercised considerable discernment in the expenditure of the funds he received. I do not consider that there is any indication in the way in which Mr Pakzad spent his money which suggests an impaired ability to make rational decisions.
7. Although it might be thought imprudent to have spent such a considerable sum on his home, thus leaving no funds left for living expenses over such a lengthy preclusion period, Mr Pakzad did so knowing that his wife was entitled to receive social security benefits on which their family could live. He also hoped to gain further employment. I infer from his evidence and the documentary evidence, particularly the Centrelink records to which I have referred, that he made a carefully calculated decision to purchase a far from modest home in the circumstances taking those facts, particularly his wife’s social security payments, into account.
8. I do not accept Mr Pakzad’s evidence, as corroborated by Dr Schiff’s evidence, to the extent that it suggests that he made his decision in the absence of necessary support. First, I infer from Mr Pakzad’s evidence considered as a whole, despite his denial under cross-examination, that his wife was in fact involved in his decision to make the purchase in question. Furthermore, as I have indicated, Mr Pakzad’s decision was made in consultation with Dr Schiff.
9. As I have said, Mr Pakzad gave evidence that it was important to him for cultural reasons to purchase a home for his family. I do not consider that “special circumstances” can be said to exist for the purposes of s 1184K of the Act merely because the expenditure of a compensation payment has been motivated by cultural, personal or social values, for the reasons expressed by Deputy President Forgie in *Secretary, Department of Social Security and Darcy Ah Sam* [1994] AAA 254 at [40]-[42]. While I accept that Mr Pakzad considers that it was appropriate and important to purchase a home for his family, that cannot be enough of itself to make his circumstances “special”. The legislative intention to prevent “double payments” would otherwise be subverted.
10. In any event, given the amounts of the compensation payment and superannuation benefit that Mr Pakzad received, he could have purchased a modest home for his family and thus left the remaining sum to meet his living expenses, together with the social security benefits received by his wife, for the length of the preclusion period. That would have provided his family with security not only in terms of their accommodation but also in terms of providing some disposable income. However, he instead chose to buy a house which is not a modest one. That tends to suggest that Mr Pakzad’s decision was not motivated merely by any cultural imperative of home ownership but also by his personal preference for a large and comfortable home. Consonantly, I infer that the decision that Mr Pakzad made was not motivated by necessity.
11. In considering whether Mr Pakzad’s circumstances constitute “special circumstances” for the purposes of s 1184K of the Act, I have also had regard to his financial circumstances. Although I accept that Mr Pakzad and his family are living in circumstances which necessitate frugality, I do not accept that they are quite as dire as he portrayed them. In particular, I do not accept that his wife’s social security payments, which now total $1,664.78 per fortnight, do not cover basic living expenses.
12. As I have said, Mr Pakzad owns his home outright; accordingly, he has no mortgage or rental payments to make. As he owns his car, he has no car payments. His medical expenses related to his workplace injury, including those pertaining to his psychiatric condition, are met by Workcover. He has no debts other than the sum of $2,000 owed to his brother, who has not demanded the return of that sum.
13. Although he now has four children, they are very young and will still be so when Mr Pakzad’s preclusion period ends, in just over three years. Accordingly, the family’s expenses in relation to the children are unlikely to vary significantly from those set out in Mr Pakzad’s statement of financial circumstances to which I have referred.
14. I note also that Mr Pakzad and his wife have managed to travel overseas several times over the last few years. Even if his brother had paid for his airfares on each occasion, I infer from the evidence that Mr Pakzad inevitably incurred expenses with respect to this travel. Although Mr Pakzad characterised it as assisting in his rehabilitation, in the absence of any corroborating medical evidence I do not accept that such travel was necessary in that regard, for him or his wife. That expenditure was therefore discretionary.
15. In my view, upon careful consideration of the evidence, there is nothing unusual or different about Mr Pakzad’s circumstances; nor are there any unfair, unintended or unjust consequences of the imposition of the preclusion period in this case.
16. I am satisfied that Mr Pakzad made a voluntary choice to spend the entirety of the significant sums paid to him not only by way of compensation for his injury but also from his superannuation fund, almost all of it being spent on the purchase of his home. He did so despite being aware that he would not be entitled to receive income support payments from Centrelinkfor the next six years and four months.
17. I infer from Mr Pazkad’s evidence, including that concerning how he went about choosing the home to be built on his land, that he also knew that he could have purchased a more modest home for his family and thus have retained a sizeable portion of those funds for his family’s living expenses. However, as I have said, he also knew that his wife was entitled to receive the social security benefits to which I have referred and he took that fact into account in purchasing the particular home that he chose.
18. The fact that Mr Pakzad hoped to gain further employment and has failed to do, leaving aside the question of whether that was a realistic hope in the circumstances, does not change the fact that Mr Pazkad made a deliberate decision to expend the entirety of the funds he received in the way in which he did. He is essentially in precisely the position he expected himself to be in if he were unsuccessful in obtaining further employment.
19. Mr Pakzad received compensation for the significant misfortune he suffered when he was injured at work. Consequently, he became subject to the preclusion period. However, Mr Pakzad’s circumstances have not altered significantly since the preclusion period commenced; he has not suffered some further unexpected misfortune unrelated to his work injury.
20. Mr Pakzad now has a further choice available to him. He is in a position which enables him to decide whether to keep or sell his home, according to his and his family’s personal preferences. He can choose to retain the home he purchased and his family can continue to live on the social security benefits his wife receives until the end of the preclusion period. As I have indicated, that will occur in August 2018, which is just over 3 years away now. Having considered the evidence concerning Mr Pakzad’s financial circumstances, I am not satisfied that Mr Pakzad will be forced to sell his home if the preclusion period is not reduced.
21. Alternatively, if Mr Pakzad chooses, he can sell his home and buy a more modest home, thus making available a significant sum to supplement his wife’s social security payments for the balance of the preclusion period. Mr Pakzad now owns a valuable asset. There is no evidence to suggest that his home has lost any of its value or is not realisable. If Mr Pakzad makes that choice, he and his family will be able to live in a less frugal way for the balance of the preclusion period, thus permitting more discretionary expenditure. Alternatively, he could choose to sell his house and return to rented accommodation. Although on his evidence he does not wish to sell his house for either purpose, he does have that option available to him. However, as I have said, I am not satisfied that he will be compelled to do so in any event.
22. As I have said, I do not consider that it would be “appropriate” to exercise the discretion in s 1184K in favour of Mr Pakzad even if his circumstances did constitute “special circumstances” for the purposes of that provision; as I have also said, I do not consider that “special circumstances” exist in this case. The exercise of the discretion in the circumstances of this case would defeat the legislative intention of preventing “double payment” manifested by the provisions of Part 3.14 of the Act to which I have referred.

# CONCLUSION

1. For the above reasons, the decision under review will be affirmed.

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| I certify that the preceding 68 (sixty-eight) paragraphs are a true copy of the reasons for the decision herein of Deputy President F J Alpins. |

[sgd]........................................................................

Dated

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| Dates of hearing | **11 & 26 August 2014, 10 February 2015** |
| Applicant | **In person** |
| Advocate for the Respondent | **Ms Ailsa Bramley** |
| Solicitors for the Respondent | Programme Litigation and Review Branch, Legal Division, Department of Human Services |