Palmer and Secretary, Department of Social Services (Social services second review) [2015] AATA 832 (26 October 2015)

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| Division | GENERAL DIVISION |
| File Number | 2015/5328 |
| Re | Margaret Palmer |
|  | APPLICANT |
| And | Secretary, Department of Social Services |
|  | RESPONDENT |

# Decision

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| Tribunal | **Deputy President PE Hack SC** |
| Date | **26 October 2015** |
| Date of written reasons | **28 October 2015** |
| Place | **Brisbane** |

The application is dismissed pursuant to section 42B(1) of the *Administrative Appeals Tribunal Act 1975* (Cth).

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**Deputy President PE Hack SC**

**CATCHWORDS**

SOCIAL SECURITY – pension bonus – applicant received modest pension in 2009 before pension cancelled – lodged claim in 2014 – whether earlier receipt of pension precludes applicant from pension bonus – relevant criteria that person not receive age pension previously – applicant does not qualify for bonus – application dismissed.

**LEGISLATION**

Administrative Appeals Tribunal Act 1975 (Cth), s 42B(1)

Social Security Act 1991 (Cth), s 92C

# REASONS FOR DECISION

**Deputy President PE Hack SC**

**28 October 2015**

1. This is an application by the respondent, the Secretary of the Department of Social Services, who seeks an exercise of the Tribunal’s power to summarily dismiss the underlying application by Mrs Margaret Palmer. That power, contained in section 42B of the *Administrative Appeals Tribunal Act 1975* (Cth), may be exercised where, relevantly, an application has no reasonable prospect of success. I am persuaded the present application answers that description and it ought be dismissed without proceeding to review the decision.
2. The background is uncontroversial. Mrs Palmer was granted age pension briefly in early 2009 and was paid a very modest amount of money, totalling a little over $170.00, before her pension was cancelled in June 2009 because of her husband’s earnings. Many years later, in June 2014, Mrs Palmer again lodged a claim for age pension and a claim for the pension bonus because, by then, her husband had ceased working and she was no longer prevented by his earnings from receiving the pension. She has been receiving an age pension with effect from June 2014 but the respondent determined that she was not entitled to the pension bonus because of her earlier receipt of age pension. That decision was affirmed by an authorised review officer and by the Social Services and Child Support Division of the Tribunal on 25 September 2015. Mrs Palmer now seeks a second tier review in the General Division of the Tribunal.
3. The qualification for pension bonus is set out in section 92C of the *Social Security Act 1991* (Cth). Relevantly, paragraph (b) of that section makes one of the criteria for eligibility that “the person has not received an age pension at any time before making a claim for the pension bonus”. As I have said, it is uncontroversial that Mrs Palmer received about $170.00 by way of age pension in March and May 2009. Thus, and despite the modest amount of the payment, section 92C(b) has the effect that Mrs Palmer does not qualify to receive the age pension bonus.
4. Mrs Palmer tells me that she was not told at the time of claiming the age pension about the operation of the Pension Bonus Scheme nor that receipt of the age pension, even in a trifling amount, would have the effect of precluding her from receiving the pension bonus. In the correspondence that has been sent to the Tribunal, Mrs Palmer indicates the value that has been lost, as a consequence of receiving just over $170.00, is an amount in excess of $9,000. The matters raised by Mrs Palmer are concerning.
5. The Commonwealth has established a mechanism to compensate people affected by defective administration of Commonwealth law and programs, the Compensation for Detriment caused by Defective Administration scheme (CDDA). As it seems to me, that is the avenue that Mrs Palmer ought now pursue. Ms Campbell, who appears today for the Secretary, has undertaken that she will contact Mrs Palmer and give her details of how she can pursue a claim and I thank Ms Campbell for that assistance.
6. In the circumstances where I am satisfied that there are no reasonable prospects of success it is in the interests of all, including Mrs Palmer, that I dismiss her application.

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| I certify that the preceding 6 (six) paragraphs are a true copy of the reasons for the decision herein of Deputy President PE Hack SC |

..............................[Sgd]..........................................

Dated

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| Date of hearing | **26 October 2015** |
| Applicant | **In person** |
| Solicitors for the Respondent | **Ms C Campbell, Department of Human Services Program Litigation and Review Branch** |