All criteria needs to be met to claim death benefit dependant: PBR

The importance of satisfying all the criteria needed for a death benefit dependant was highlighted in a recent Private Binding Ruling.

by Keeli Cambourne — August 26, 2026 in News Reading Time: 4 mins read

Australian Taxation Office

The PBR (1052514604156) dealt with the adult child of the deceased who was the sole member of an SMSF.

Documents provided to the ATO included grant of probate for the estate of the deceased, the last will and testament of the deceased, BDBN for the trustees of the SMSF, the SMSF trustee declaration signed by the beneficiary, a consent to act form addressed to the board of directors of the corporate trustee of the fund signed by the beneficiary, as well as trust deeds copies of minutes and resolutions, and a letter from lawyers confirming that the beneficiary has not received a lump sum payment from the fund.

In support of the ruling application, the beneficiary also provided a number of statements to illustrate the nature of the relationship between them and the deceased.

They stated the two had lived together at the deceased's house following a serious motor vehicle accident, including an above knee amputation. The beneficiary continued to live with the deceased until their passing, apart from moving into a share unit for a short period. The beneficiary moved back in with the deceased after the deceased fractured their hip in a fall.

The ATO heard that the deceased had some issues with short term memory loss and the beneficiary would provide reminders about tasks, appointments and household requirements.

The beneficiary supported the deceased with mobility issues, emotional well-being and transport to doctor appointments.

The ruling specified that the beneficiary was not financially dependent on the deceased person and therefore, paragraph 302-195(1)(d) of the ITAA 1997 is not applicable.

Additionally, to meet the definition of a death benefits dependant, the beneficiary must have been in an interdependency relationship with the deceased, in accordance with paragraph 302-195(1)(c) of the ITAA 1997, which they did not.

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The ruling stated that it is accepted the beneficiary had a close relationship with the deceased, in contrast to a "close personal relationship" under taxation law, however, the statements from the beneficiary did not indicate that the relationship between the beneficiary and the deceased was over and above a normal family relationship between an adult child and a parent.

"There was neither an evidence-based assertion of a mutual commitment to a shared life, nor any evidence suggesting that the parties intended the relationship to be permanent," it stated.

"Notwithstanding the marginal period, the beneficiary had moved into a private rental property and then returned to live with the deceased prior to their death. The assertion of emotional support made in a statutory declaration was not evidenced by the degree and regularity of that support."

It continued that the fact the beneficiary and the deceased lived together for a period of time and were living together at the time of the deceased's passing, and the beneficiary provided daily support to the deceased does not mean that they had a mutual commitment to a shared life.

"In this case, the beneficiary remained in the deceased's home in order to provide care and support care for them. The evidence does not show that the beneficiary and the deceased shared a 'close personal relationship'."

In regard to providing financial support, the ruling added that the bank statements provided for the deceased show the deceased made mortgage payments, paid for house and pool renovations and paid household expenses such as rates, power and gas, water, family health insurance, household maintenance, phone and groceries. They also made two cash transfers to the beneficiary.

Bank statements provided for the beneficiary show grocery purchases and monthly fees for streaming services.

"It is not considered that the deceased or the beneficiary were financially dependent on the other as they both had sufficient independent income to support themselves.," the ruling stated

"As all of the requirements in section 302-200 of the ITAA 1997 have not been satisfied, the deceased and beneficiary were not in an interdependency relationship in the period just before the deceased's death . . . the beneficiary is not a death benefits dependant as defined under section 302-195 of the ITAA 1997."

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