

support to which the applicant was entitled has in fact been forthcoming and his need for special benefit thus negated.

(Reasons for Decision, para. 10.)

Special benefit not a complete substitute for unemployment benefit

A second factor which told against Beames' application was the age criterion for unemployment benefit:

An exercise of the discretion conferred by s.124(1) to make a payment of special benefit in favour of the applicant for no other reason than he is under the age of 16 years, and that he satisfies the remaining criteria in respect of receipt of unemployment benefits, would be to ignore the specific statutory direction that unemployment benefits [sic] are not to be paid to a person who has not attained the age of 16. [That] would be to assume a power to repeal the age limitation imposed by Parliament in s.107. Parliament could not in my opinion have intended that the discretion contained in s.124 should be used in this way.

(Reasons for Decision, para. 11.)

Departmental instructions—creating more problems than they solve

The DSS had rejected Beames' application for another reason. A review officer had told him 'that to be eligible for special benefit he had to be employed for three months or where possible long term permanent employment ceased due to unforeseen circumstances'. And the DSS's Unemployment and Sickness Benefit Manual included the following statement:

As special benefit is intended to be granted only where the claimant has established, or where there was reasonable expectation of his

establishing, some financial independence from his parents, payment will generally be made only where the claimant had commenced a full-time job of permanent or indefinite duration . . . or would have commenced such a specific job but for reasons beyond his control.

The AAT commented, and concluded, as follows:

13. Two things may be said of this approach. One is that it is understandable that guidelines should be laid down for the assistance of Departmental officers in their administration of the Act. But generalised restatements of the effect of legislation can breed more problems than they solve, and they can concretise in the form of rules what are only suggestions. The requirement of 'financial independence from parents' may itself have problems. What if the applicant, despairing of finding work in his home city, had left for the capital of his State, to seek his fame and fortune, but had failed to get a job? Jobless and under the age of 16, and in fact unsupported by his parents, it would surely appear that he could be a proper case for special benefit. Likewise, even accepting the test of 'financial independence' it can hardly be said to be satisfied by a person having had, as opposed to having, employment. It seems odd that the present applicant would apparently have been treated as entitled to special benefit if he had worked full-time at a job of permanent or indefinite duration, but had then lost that job and relapsed into precisely the same domestic and financial situation in which he was placed after the casual work with his father ceased. The essence of the matter is that s.124(1) of the Act confers a discretion that should be exercised according to the criteria expressed in it and conformably with the Act as a whole.

The exercise of the discretion should not be otherwise limited.

14. The truth is in this case that the applicant has not been able to earn a sufficient livelihood for himself. But, because his parents have discharged their parental, moral and legal obligation to maintain him, he has not been without a sufficient livelihood. Accordingly there seems to me to be no adequate reason to exercise the discretion conferred by s.124(1) in his favour. In so finding I have not overlooked the fact that s.124(1)(c) makes inability to 'earn' a sufficient livelihood one of the criteria for the exercise of the discretion. It does not make absence of such a livelihood one of such criteria. This aspect of the problem was not raised before me in argument, and I would not wish in any way to appear to be deciding it for the future. More extreme cases might be supposed, from which it would appear unlikely that it should be concluded that the enquiry should be limited to whether there is inability to earn a sufficient livelihood, and not take into account whether a sufficient livelihood is in fact otherwise provided. What, for instance, of a case in which a claimant has a substantial income from investments, but is unable to 'earn' a sufficient livelihood? For present purposes, however, I am content to say that a case in which there has been support by parents is not one in which the discretion should be exercised. Also, as previously stated, it is not in my opinion a reason for the exercise of the discretion that had the applicant attained the age of 16 years he would have been entitled to unemployment benefit.

15. In all the circumstances, I consider that I have no option but to affirm the decision of the respondent, made by his delegate, not to pay special benefit to the applicant.

(Reasons for Decision, paras 13-15.)

Recent AAT decisions

These decisions will be reported in more detail in the next issue of the *Reporter*.

• IVOVIC and DIRECTOR-GENERAL

(No. V81/21)

Decided: 15 July 1981

Repayment of sickness benefit following settlement of damages claim—Director-General's discretion to waive repayment in 'special circumstances': decision affirmed.

• R. C. and DIRECTOR-GENERAL

(No. N80/35)

Decided: 16 July 1981

Widow's pension—cancellation on ground of 'cohabitation'—jurisdiction of AAT—AAT's power to 'stay' cancellation

pending hearing of appeal—admissibility of Family Court documents—meaning of 'living . . . as husband and wife': decision affirmed.

• McAULEY and DIRECTOR-GENERAL

(No. Q81/17)

Decided: 20 July 1981

Child endowment—overpayment—discretion of Director-General to recover by deducting from current entitlement—no evidence of hardship: decision affirmed.

• GRECH and DIRECTOR-GENERAL

(No. V81/4)

Decided: 31 July 1981.

Invalid pension—whether maintenance

paid for children (not in pensioner's custody) should be deducted from pensioner's income for purposes of income test—whether those children should be treated as dependent on the pensioner: decision set aside.

• EDWARDS and DIRECTOR-GENERAL

(No. V80/72)

Decided: 31 July 1981.

Sickness benefit—recovery of benefit payments where beneficiary receives lump sum workers' compensation payment—can part of that lump sum 'reasonably be regarded' as related to period when sickness benefit was paid? Decision set aside.