# SOCIAL SECURITY Reporter

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## Opinion

It is now almost a year since the AAT decidded its first social security appeal. Two lessons which have emerged from that experience are that the Tribunal's decisions and procedures vary in quality, and that applicants for review need support from experienced and knowledgeable people. In some cases, unassisted and unrepresented applicants do not seem to be getting a full consideration of issues by the Tribunal.

For example, in *Weekes* (in this issue) the Tribunal decided that a person who was devoting all his efforts to setting up a tanning business could not qualify for unemployment benefit as he was not unemployed, even though his efforts were producing no income. And, while the Tribunal conceded that Weekes could be eligible for special benefit, it said that no claim had been lodged for this benefit and therefore the Tribunal could not consider Weekes' entitlement.

On the other hand, in *Te Velde* (3 *SSR* 23) the Tribunal had found a farmer not qualified for unemployment benefit because she was spending all her time maintaining an uneconomic farm. But the Tribunal then considered (and found established) her qualifications for special benefit for the relevant period, even though she had lodged no claim for special benefit for that period: the Tribunal pointed out that s.145 of the Act allowed the Director-General to consider a claim for an inappropriate benefit as a claim for the 'appropriate' benefit. This possibility was not raised before (or by) the Tribunal in *Weekes*.

Again, in *McAuley* (also in this issue) the Tribunal found that the applicant had been overpaid child endowment – due to a clerical error by the Department – and affirmed the Director-General's discretionary decision to recover the overpayment by withholding future payments of child endowment. But the Tribunal did not consider or pursue the point made in *Buhagiar* (also in this issue) that, in the exercise of the discretion under s.140(2), the Director-General should 'be guided by principles of consistency, fairness and administrative justice' and that the discretion should be exercised *against* recovery where 'the prime cause of the overpayment was administrative error and . . . the applicant's circumstances are such as to make it inequitable that he should now be obliged to repay the overpayment consequent upon the failure of the Department to adjust the applicant's rate of pension . . .' Again, this argument – as to the principles on which the s.140(2) discretion should be exercised – was not raised before (or by) the Tribunal in *McAuley*.

The third example is *Keating* (in this issue), where the Tribunal reviewed the rate of sickness benefit to be paid to the applicant. The *Social Services Act* fixes this rate by reference to the person's loss of income (s.113); and the Tribunal assessed the loss of income by looking at the applicant's income immediately before the grant of sickness benefit. The Tribunal did not consider the possibility that, over a prolonged period of sickness, a person's 'loss of income' might not be constant; that (for example) a person who was unemployed immediately before qualifying for sickness benefit, might (had it not been for the sickness) have found employment, and a substantial income, at some time during the prolonged period; and that the 'income lost' might well be regarded as large enough to entitle the applicant to the full rate of sickness benefit.

That was the view taken by the Tribunal in *S.B.* (in this issue), where the applicant clearly had lost no income at the onset of her incapacitating sickness – she was a full-time tertiary student. The Tribunal said that, because the sickness eventually obliged the applicant to abandon her tertiary course, she should be treated as having lost income from the time she gave up her studies, even though she had at no time been in employment or receiving any income.

But, as in the other cases, this argument was not raised before (or by) the Tribunal.

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## In this issue:




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