

Federal Court Decision

AMBE v DIRECTOR-GENERAL OF SOCIAL SERVICES

Federal Court of Australia
Decided: 3 November 1981 by Evatt, Fisher and Ellicott JJ.

His was an appeal to the Federal Court, under s.44 of the *AAT Act*, against the AAT's decision in *Lambe*: see 1 SSR 5.

The AAT had decided that Lambe was disqualified from receiving supporting parent's benefit because she was 'living with a man as his wife on a *bona fide* domestic basis although not legally married to him': *Social Services Act*, s.83AAA(1), definition of 'supporting mother'.

Section 44 of the *AAT Act* provides for an appeal to the Federal Court from an AAT decision 'on a question of law'. The question of law raised by this appeal was identified by the Federal Court as follows:

[T]hat the Tribunal incorrectly interpreted the definition of 'supporting mother' in [s.83AAA(1) of] the Act as requiring consideration to be given to the matters of financial support as merely one of a series of factors, whereas it should correctly have been regarded as the paramount or crucial factor.

According to the Federal Court, counsel for Lambe argued that, to determine whether a woman was 'living with a man as his wife on a *bona fide* domestic basis' and so disqualified from supporting parent's benefit, the financial relationship between the woman and the man was decisive. The crucial question should be, 'is the man providing financial support to the woman?' The *Social Services Act* was only concerned with meeting financial needs, and such an approach accorded with the scheme and purpose of the Act. Counsel cited, in support of this argument, decision of the Ontario Divisional Court, *re Proc* 53 DLR (3d) 512. (This case was also raised before the AAT in *Tang*: 2 SR 15.)

The Federal Court rejected counsel's argument that to concentrate on financial need or financial support would coincide with the scheme or purpose of the *Social Services Act*, which was, according to the court, to provide financial support to persons in particular categories (the aged, invalids, widows etc.) not to persons who could demonstrate that for any reason they were in need.

The Court referred to the parts of the Act which set out the qualifications for age, invalid and widow's pensions and aid:

In each instance the legislature, having provided qualification or conditions of eligibility for the particular pension, proceeds to deal quite separately with the rate or amount (if any) of pension payable with regard to the particular circumstances of the qualified person. It is here that the need of the individual is of crucial significance in determining whether any and if so how much support is considered necessary. Need by itself is neither a qualifying nor a disqualifying factor when eligibility is in question.

(Transcript of Judgment, p.11.)

Accordingly, Lambe's eligibility for a supporting parent's benefit was to be determined by using the definition of 'supporting mother' in s.83AAA(1), not by assessing her need for a pension. The definition contained no 'express or direct reference . . . to the need of the supporting mother or the amount of financial support she receives either from her husband or the person with whom she may be living': Transcript of Judgment, p.12. To determine whether a woman was 'living with a man as his wife on a *bona fide* domestic basis', all facets of the interpersonal relationship should be taken into account. Financial support would be an important although not necessarily crucial consideration: it would be only one of a number of relevant matters which the AAT should take into account.

The Federal Court held that the AAT had not made any error of law on its interpretation of the definition of 'supporting mother' and dismissed the appeal with costs.

AAT Appeals

The following statistics have been compiled from information supplied by the Department of Social Security.

	July 1981	Aug. 1981	Sept 1981	Oct. 1981
Applications for review lodged	86	55	77	52
Decided by AAT	6	10	4	6
Withdrawn by applicant	6	5	2	5
Conceded	12	4	3	DSS
No jurisdiction			3	3
Awaiting decision at end of month	313	340	404	439

	September 1981	October 1981
Medical appeals	62	37
Other appeals	15	15
	77	52

	September 1981	October 1981
ACT	1	0
NSW	7	13
Qld	31	22
SA	5	1
Tas.	2	0
Vic.	29	15
WA	2	1
	77	52

	July 1981	Aug. 1981	Sept 1981	Oct. 1981
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No jurisdiction			3	3
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The following decisions, made at the end of November, will be reported in detail in February 1982.

. GUSE and DIRECTOR-GENERAL (No.Q81/9)
Decided: 27 November 1981.

Unemployment benefit - farmer, on uneconomic farm, available for full-time paid employment - qualified for unemployment benefit: decision set aside.

. LAW and DIRECTOR-GENERAL (No.Q81/40)
Decided: 23 November 1981.

Unemployment benefit - part-time student, preparing evidence and submissions in AAT case no.Q81/83 (see below) - found to be not willing to undertake paid work - and not to have taken reasonable steps to obtain work - could be eligible for special benefit while preparing AAT case: decision affirmed.

. LAW and DIRECTOR-GENERAL (No.Q81/83)
Decided: 23 November 1981.

Special benefit - unemployment benefit was terminated because of move to low employment area - inability to earn a sufficient livelihood not established - special benefit should not be paid to a person whose need arises directly from his own action: decision affirmed.

. GEE and DIRECTOR-GENERAL (No.N80/108)
Decided: 25 November 1981.

Recovery of overpayment - supporting parent's benefit paid over a long period - failure of DSS to note rise in beneficiary's income - exercise of discretion not to recover - calculation of 'annual rate of income': decision affirmed.

. FERGUSON and DIRECTOR-GENERAL (No.T81/7)
Decided: 26 November 1981.

Widow's pension - cancellation on the ground of cohabitation - applicant providing board to man for many years and acting as foster mother to man's children - not living as husband and wife: decision set aside.

. ROBERTSON and DIRECTOR-GENERAL (No.V81/61)
Decided: 27 November 1981.

Invalid pension - whether permanently incapacitated - back complaint, depression and menopause - incapacity found to fluctuate and so not permanent - rehabilitation a real prospect: decision affirmed.

. WEBB and DIRECTOR-GENERAL (No.T81/11)
Decided: 27 November 1981.

Invalid pension cancelled after five years - back complaint, low education level, 'social, family and attitudinal factors' - incapacity not permanent - CES training and job placement scheme for disabled persons: decision affirmed.