the AAT for review of the cancellation.

While Godfrey complained of pain in the shoulder and weakness in his right arm, there was no medical evidence suggesting that he was incapacitated for work to the extent required by s.23 of the *Social Services Act* (at least 85%). Any incapacity which he did have was, to a considerable degree, remediable: so, even if he was 85% incapacitated, this would not be permanent.

The Tribunal concluded that Godfrey's subjective assertion of pain was not enough to fulfil the requirements of the *Social Services Act*.

Formal decision

The AAT affirmed the decision under review.

WARD and DIRECTOR-GENERAL OF SOCIAL SECURITY No. Q81/87

Decided: 28 July 1982 by R. K. Todd.

Edward Ward was born in Australia in 1936 and qualified as a carpenter. He worked until about 1978. He developed osteo-arthritis in one knee and he complained of difficulty in walking and climbing stairs. His application for invalid pension was rejected by the DSS.

On the review of this rejection, the AAT found a minor degree of osteo-arthritis and some muscle wasting which had led to a loss of confidence in the ability of the knee and leg to bear his weight. By themselves these disabilities did not incapacitate him for work.

However, 'social factors' (particularly the reluctance of an employer to hire a worker with Ward's disabilities) would probably lead to the conclusion that Ward was at least 85% incapacitated for work.

But that incapacity was not permanent. It could not be described as 'likely to continue' (see *Panke*, (1981) 2 *SSR* 9) because there was a real prospect that the muscle wasting would respond to physiotherapy. There were 'no guarantees that it will work, but on the medical evidence it is something that ought to be tried': Reasons for Decision, para. 9.

Formal decision

The AAT affirmed the decision under review.

Sickness benefit: recovery from compensation award

PRASIC and DIRECTOR-GENERAL OF SOCIAL SECURITY No. N81/218

Decided: 18 August 1982.

Zuhdija Prasic had been paid sickness benefits (totalling $9768) by the DSS following a work injury. In March 1981, Prasic's claim for worker's compensation was settled.

The DSS had earlier written to the workers' compensation insurer warning it that the Department would have a claim on any compensation payment. When the DSS learned of the settlement, it advised the insurer by telephone that the amount of its claim was $9768; and the insurer paid that amount direct to the DSS before paying the balance to Prasic.

The DSS was relying on s.115 of the *Social Security Act*. Under s.115(6), the DSS may recover, from any person liable to pay compensation to a sickness beneficiary, an amount equal to the sickness benefits paid to that beneficiary (if the compensation and the benefits cover the same period and the same incapacity).

Prasic asked the DSS to set aside its claim to repayment of sickness benefit until he had settled his common law claim for damages. The DSS refused and Prasic applied to the AAT for review of this decision.

A technical 'irregularity'

The AAT confirmed the earlier decision in *Saqqa*, (1981) 5 *SSR* 55, that once the Director-General had recovered sickness benefit payments from an insurer, there was no discretion to forego that recovery or to return the amount recovered.

But Prasic's counsel argued that the recovery of his sickness benefit from the insurer had been illegal because of technical irregularities: for instance, the amount of repayment had not been by a 'notice in writing' as specified in s.115(6) but by a telephone call. This irregularity, Prasic's counsel said, made the demand and the repayment illegal.

The AAT rejected that argument: if the insurers were prepared to dispense with formalities and accept an oral notice of the amount to be repaid, Prasic was in no position to complain of the inadequacy of the notice.

Accordingly, the recovery of sickness benefit payments from the insurer had been effected under s.115(6); and there was no power or discretion in the Director-General to 'undo' that recovery: see *Saqqa*.

Formal decision

The AAT decided that the decisions under review 'should be confirmed'.

Special benefit: migrant

TAKACS and DIRECTOR-GENERAL OF SOCIAL SECURITY No. V81/557

Decided: 27 August 1982 by R. K. Todd.

In March 1981, Dobra Takacs migrated to Australia from Rumania. Before her migration, her daughter had signed a 'maintenance guarantee' under Part IV of the *Migration Regulations*, in which the daughter undertook (to the Commonwealth government) to support Takacs.

Shortly after her arrival in Australia, Takacs applied to the DSS for a special benefit. When the DSS rejected this application, she sought review from the AAT.

The applicant's financial situation

When the daughter had signed this guarantee, she was working as a nursing aide. But, before her mother arrived in Australia, the daugher had given up this work (because of a back injury) and was being supported by her husband.

Takacs had no income of her own, lived with her daughter and son-in-law and was supported by the son-in-law. His net weekly income (from a superannuation pension) was about $185.

The AAT was told that the three adults managed to 'make ends meet' (with some difficulty) but that Takacs was unhappy to be entirely dependent on her son-in-law.

Qualifying for special benefit

Section 124(1) of the *Social Security Act* gives to the Director-General a discretion to pay special benefit to any person if the Director-General is satisfied that the person 'is unable to earn a sufficient livelihood' and if the person is not receiving a pension or qualified to receive a benefit.

The AAT found that Takacs was undoubtedly unable to earn a sufficient, or any, livelihood because of her age and other factors.

The Director-General's discretion

But, once Takacs had met the preconditions of s.124(1), the question arose whether the Director-General's discretion