

TSAOUCIS and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. Q81/145)

Decided: 21 September 1982 by J. B. K. Williams.

Peter Tsaoucis was born in Greece and migrated to Australia in 1965. He had little formal education, spoke little English, and worked in labouring jobs. He had hernia operations in 1974, 1978 and 1981.

In June 1981 he applied to the DSS for an

invalid pension; this application was rejected. He applied to the AAT for review of this decision.

Tsaoucis' surgeon gave evidence that he had made a good recovery from the 1981 operation. There was a 90% chance of full recovery, so that he could do heavy labouring work within about three years. In the meantime, he could undertake light manual work. A surgeon consulted by the DSS confirmed this view.

The AAT found, on the basis of this evidence, 'that, whatever the applicant's present incapacity, expressed in the percentage terms may be, it is [not] an incapacity which is likely to last indefinitely': Reasons for Decision, para. 8. Accordingly, Tsaoucis was not at least 85% permanently incapacitated for work.

Formal decision

The AAT affirmed the decision under review.

Child endowment: late application

FLYNN and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. V81/575)

Decided: 12 October 1982 by A. N. Hall.

Mrs V. J. Flynn was granted child endowment for her twin children in May 1964. Shortly after their 16th birthday (in April 1980), the DSS mailed to Flynn a claim form for 'student family allowance' (that is, child endowment for a full-time student aged 16 or more). But, according to the DSS, Flynn did not return this form; and the DSS cancelled the twins' endowment.

In August 1981, Flynn realised that she was receiving endowment only for her three younger children and not for the twins, who were full-time students. She applied for and was granted student family allowance (from September 1981); but the DSS refused to back-date this allowance.

Flynn applied to the AAT for review of this refusal.

'Special circumstances' for back-dating payment?

Where a person claims child endowment more than six months after becoming eligible, the endowment is payable from the date of the claim: *Social Security Act*, s.102(1)(b). However the Director-General may back-date payment (to the date of eligibility) 'in special circumstances': s.102(1)(a).

During the AAT hearing (conducted by conference telephone), Flynn had said that she was sure that she had returned the claim

forms to the DSS in May 1980. However, Flynn subsequently wrote to the AAT saying that she was not certain of this and that she could not sign a statutory declaration in support of her statement during the hearing.

The Tribunal observed:

[A]s the evidence does not enable me to find that the claims were posted to the Department, no question arises of there being 'special circumstances' for extending the date for lodgment of the claims until . . . August 1981 . . . The Applicant's case depended upon my finding as a fact that the claims were completed promptly and returned by post and that they must have gone astray in the post or within the Department. No other basis for a finding of 'special circumstances' was suggested.

(Reasons for Decision, para. 12)

Formal decision

The AAT affirmed the decision under review.

MICHAEL and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. V81/481)

Decided: 21 October 1982 by R. K. Todd.

Leonidas Michael asked the AAT to review the Director-General's refusal to back-date payment of child endowment for his 'student child'.

Michael and his wife had received endowment for their son from July 1962 until shortly after his 16th birthday, when the endowment was cancelled because Mrs

Michael had not done anything to satisfy the DSS that her son was a 'student child' or to claim student endowment for the son.

Early in 1981, Michael noticed that endowment was no longer being paid into his bank account. Mrs Michael lodged a claim for student endowment which the DSS granted. But the DSS refused to back-date payment.

'Special circumstances' for back-dating payment?

Michael claimed that there were 'special circumstances' to justify retrospective payment of the endowment. (Section 102(1)(a) gives the Director-General a discretion to back-date payment in 'special circumstances': see *Flynn*, in this issue of the *Reporter*.)

Michael said that endowment had been paid into his current account which was also used as the trading account for the shop which he operated. Because of the mixing of family and business money and because the reconciliation of bank statements was left to his accountant, the cancellation of the endowment had not been noticed for two-and-a-half years.

After referring to the earlier decision *Faa* (1981) 4 SSR 41, the Tribunal said that none of the 'circumstances disclosed in the present matter are "special" within the meaning of the Act': Reasons for Decision, para. 9.

Formal decision

The AAT affirmed the decision under review.

Handicapped child's allowance: 'constant care'

SCHRAMM and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. Q81/95)

Decided: 1 October 1982 by R. K. Todd.

Janet Schramm had been granted a handicapped child's allowance in respect of her daughter Melanie, who suffered from cystic fibrosis. This had been granted under s.105 of the *Social Security Act*, that is, on the basis of 'severe handicap', in May 1977. In April 1979 this was cancelled. In September 1979, Schramm was granted a handicapped child's allowance under s.105JA, that is, on the basis that her child was 'handicapped'—one needing care and at-

tention 'only marginally less than he would need if he were a severely handicapped child' (s.105H(1)); but, because of the income test which applied to an allowance under s.105JA, the rate payable to Schramm was 'nil'.

In September 1980 Schramm re-applied claiming that her child was severely handicapped. The DSS rejected this claim and Schramm applied to the AAT for review.

The evidence

The tribunal described the care and attention given to Melanie by Schramm or her husband. This included physiotherapy sessions three to five times a day, supervision of drug taking and diet, special swimming

sessions and other physical exercise recommended by doctors. Medical evidence was given to the AAT on the need for constant physiotherapy and the Tribunal said that treatment could occupy three hours a day. A number of expenses had been incurred in relation to the child, including medication, physiotherapy equipment and medical insurance. Melanie had commenced preschool in 1981 for two-and-a-half hours a day and joined an ordinary primary school in 1982, a decision strongly supported by her doctor, who gave evidence. Schramm had recently begun part-time work, although she or her husband need to be within close reach of the school in order to