

Supporting parent: 'living apart from husband'?

RILEY and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. T82/27)

Decided: 20 December 1982 by R. K. Todd.

Lillian Riley had been granted a supporting parent's benefit in 1980, following her separation from her husband. In February 1982 the DSS cancelled her benefit on the ground that she was no longer 'living apart from her husband'—an essential part of the definition of a 'supporting mother', and therefore of a 'supporting parent', in s.83AAA(1) of the *Social Security Act*.

A question of credibility

On review of that cancellation, the AAT said that the decision depended 'entirely upon an assessment of the credit of the applicant and her husband'. On all the evidence, the Tribunal concluded that, after

their separation, Riley and her husband had resumed living together without informing the DSS. Accordingly, the cancellation should be affirmed.

Suppression of evidence

During the hearing, counsel for the DSS had asked the Tribunal to make an order under s.35(2) of the *AAT Act*, which would have the effect of withholding from Riley (but not her counsel) the identity and evidence of several 'informers'.

The Tribunal refused to exercise this power under s.35(2) of the *AAT Act* because, firstly, the identity of these 'informers' could not, as a practical matter, be kept from the applicant: their only way of approaching the hearing room was through public areas. Secondly, the AAT said:

I did not consider that a fair hearing could be

given if the applicant's counsel be prevented from obtaining instructions from his client for the purpose of cross-examining the witness. This had to be balanced against what was put to me as being the public interest in protecting persons who volunteer information to the Department of Social Security thus leading to protection of the public purse.

(Reasons for Decision, para.3)

However, the Tribunal did order that the identity and evidence of one witness be disclosed only to the parties and their legal representatives, in order to protect that witness against recrimination from the applicant's husband (from whom, it appeared, the applicant had recently re-separated).

Formal decision

The AAT affirmed the decision under review.

Statistics

Appeals lodged in 1982—a summary

During 1982, there were 905 applications for review to the AAT. Of these, invalid pension appeals were, by far, the largest single category: there were 668 such appeals (73.8%).

Other significant categories were:

- age pension: 47—5.2%
- unemployment benefit: 46—5.1%
- handicapped child's allowance: 32—3.5%
- widow's pension (class A): 25—2.8%
- special benefit: 21—2.3%
- sickness benefit: 19—2.1%
- supporting parent's benefit: 18—2.0%
- family allowance: 16—1.8%

These 905 appeals were distributed between the States and Territories as follows:

ACT:	7—0.8%
NSW:	265—29.3%
NT:	1—0.1%
Qld:	184—20.3%
SA:	66—7.3%
Tas:	42—4.6%
Vic:	295—32.6%
WA:	45—5.0%

(10%). Applicants had withdrawn 267 appeals (31%) and the Department had conceded 316 (37%).

Taking those concessions and those cases where the AAT had annulled (71 cases) or varied (12 cases) the original decision, it can be said that applicants 'succeeded' in 399 (46%) of the 863 cases resolved.

Success rates varied significantly for different types of appeal. Of the 571 invalid pension cases, 258 (45%) were conceded by the DSS, and 51 decisions (9%) were annulled or varied by the AAT—giving a success rate of 54%.

By contrast, the success rate for all other types of social security appeal was only 31%.

These figures emphasise the value of the independent review system which the AAT represents. They also suggest that the Department's initial decisions and internal reviews are inadequate.

We should remember that each of the 399 'successful' applicants for review had been through the internal review system—Departmental reconsideration and SSAT review, as a minimum.

Observers are entitled to express real concern at the apparent failure of that review system to recognise the rights of such a high proportion of applicants.

That concern can only be increased when we recognise that, for many social security claimants, the delay between an initial Departmental decision and a final AAT decision now approaches three years.

* According to figures maintained by the Department of Social Security.

Current statistics

Invalid pensions continue to dominate the case-load of the AAT: they made up 73.8% of the appeals lodged in 1982; and, of the appeals lodged in January and February 1983, they accounted for 85.6%.

Appeals from NSW are now beginning to reflect that State's share of the Australian population. After a slow start (see (1982) 8 SSR 84), NSW accounted for 29.3% of appeals lodged in 1982, and 62% of appeals lodged in January and February 1983.

The accumulation of undecided cases—the 'backlog'—appears to be increasing again. Following a period of only marginal growth (between August and December 1982 the 'backlog' grew by 42, or 4.8%), January and February 1983 have added 120 cases to the list—a growth rate of 13.0% over the two months.

	Nov. 82	Dec. 82	Jan. 83	Feb. 83
Applications lodged*	79	64	92	124
Decided by AAT	15	12	11	5
Withdrawn	25	13	17	24
Conceded	29	15	15	17
No jurisdiction	8	6	3	4
Awaiting decision at end of month	903	921	967	1041

* Applications lodged: type of appeal

Medical appeals	59	46	77	116
Other appeals	17	18	15	8
Unknown	3	0	0	0

State where application lodged

ACT	0	0	0	1
NSW	41	9	52	82
NT	0	0	0	0
Qld	11	13	6	16
SA	4	7	4	6
Tas.	2	8	2	1
Vic.	14	19	23	16
WA	7	8	5	2

The first (almost) three years

The AAT's social security jurisdiction dates from 1 April 1980. Over the past three years almost 2000 social security appeals have been taken to the Tribunal (all but six of these since 9 September 1980, when the AAT's jurisdiction was enlarged to enable it to review any decision which had been reviewed by a social security appeals tribunal).

Of those 2000 appeals, 863 had been resolved as at 9 March 1983.* The Tribunal had decided 191 (22%) of these, and declined jurisdiction in a further 86