

AAT DECISIONS

(Reasons, pp. 11-12)

The AAT was satisfied that the DSS had formed the opinion 'that part of the general damages could reasonably be

regarded as a payment to the applicant as compensation meeting the requirements of s.115(a)' and that it was a reasonable conclusion that at the time of settlement of the court action the sum paid to

the DSS was reasonably attributable to the applicant's economic loss at that time.

Formal decision

The AAT affirmed the decision under review.

Invalid pension: residence

WILSON and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. V81/465)

Decided: 5 May 1983 by J.O. Ballard.

Wilson applied to the AAT for the stay of a decision by the DSS to cancel his invalid pension.

Wilson left Australia for New Zealand on 1 August 1980. He had been in receipt of invalid pension since his arrival from New Zealand in 1971. He intended to return to Australia and claimed to have been informed by the DSS that he could take his pension overseas for up to 12 months. However, the DSS cancelled his invalid pension on the ground that being permanently incapacitated for work on arrival in Australia and not having completed 10 years residence in Australia, he was receiving his pension by virtue of the reciprocal agreement between Australia and New Zealand (and not under s.25(2)) and under that agreement was eligible for the Australian pension only for a period of up to six months following his departure.

Residence: opinion to be formed

The applicant was in receipt of invalid pension while in Australia pursuant to

regulation 6 of the *Social Security (Reciprocity with New Zealand) Regulations*. (These regulations give effect to the reciprocity agreement between Australia and New Zealand).

That regulation reads:

- (1) This Part shall apply to any person who, having at any time resided in New Zealand, is permanently resident in Australia.
- (2) For the purposes of this Part, a person shall be deemed to be permanently resident in Australia –
 - (a) if he is resident in Australia and satisfies the Director-General that he is residing permanently in Australia; or
 - (b) if he is resident in Australia and his residence has been continuous for not less than six months, unless the appropriate authorities of Australia and New Zealand agree to the contrary.

Regulation 11 was also applicable in relation to Wilson's absence from Australia. That regulation provides:

- (1) This Part shall apply to any person ordinarily resident in Australia who is temporarily resident in New Zealand.
- (2) Subject to the next succeeding sub-regulation, a person who, in the opinion of the Social Security Commission, is not residing permanently in New Zealand shall not, by reason only of his

temporary absence from Australia, be disqualified from claiming or receiving any pension, allowance, endowment or benefit under the Act to which he would have been entitled if he had remained in Australia.

- (3) The Director-General may, in his discretion, withhold payment of the whole or such part of the pension, allowance, endowment or benefit as he thinks fit until the return of that person to Australia.

This regulation entitled the applicant to apply to the New Zealand Social Security Commission for a determination that being a person ordinarily resident in Australia, he was not residing permanently in New Zealand. If that opinion was formed by the Commission then he remained entitled to his Australian pension.

However, as no opinion had been formed one way or the other there was no *prima facie* case for restoration of the benefit on the facts. There existed only an assertion of facts by the applicant which if true would entitle him to the pension. On that basis, the AAT could not grant the stay order.

Formal decision

The Tribunal decided not to grant a stay order pursuant to s.41(2) of the *Administrative Appeals Tribunal Act*.

Invalid pension: 'permanent incapacity'

SYNTAGEROS and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. Q82/67)

Decided: 12 July 1983 by J.B.K. Williams. The Tribunal *set aside* a DSS refusal to grant invalid pension to a 54-year-old former labourer who suffered an injury to his right hand at work.

PYE and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. N82/176)

Decided: 20 July 1983 by E. Smith.

The AAT *set aside* a DSS decision to cancel an invalid pension held by a 40-year-old former labourer who suffered from spinal problems, headaches and partial deafness.

DABBAGH and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. N82/63)

Decided: 20 July 1983 by E. Smith.

The AAT *set aside* a DSS decision to cancel an invalid pension held by a 42-year-old former factory worker who had injured his back at work.

BEGOVIC and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. S82/97)

Decided: 21 June 1983 by R.A. Balmford.

The AAT *affirmed* a DSS refusal to grant an invalid pension to a 45-year-old glazier whose wrist was severely lacerated in an industrial accident and who had not worked since.

The Tribunal could not accept that he was 85% permanently incapacitated for work and considered that with rehabilitation and retraining he could expect to be attractive to an employer in any capacity which did not require the full use of both hands.

ALVARO and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. W82/59)

Decided: 30 May 1983 by G. D. Clarkson.

The AAT *affirmed* a DSS decision to refuse an invalid pension to a 30-year-old woman who had lost all power of movement in her ankles and toes. While she was unable to do the work which she had performed before her injury, she was capable of doing a wide range of work.

HARDACRE and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. N82/107)

Decided: 13 July 1983 by E. Smith.

The AAT *set aside* a DSS refusal to grant invalid pension to a 49-year-old former forklift driver who suffered from unstable angina and high blood pressure.

AZIZI and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. N82/93)

Decided: 6 June 1983 by E. Smith.

The AAT *set aside* a DSS decision to reject a claim for invalid pension lodged by a 47-year-old former factory labourer, with very limited English, who had not worked since injuring his back in 1973.

Taking into account Azizi's history (which included injury, workers' compensation award, sickness benefit, an earlier grant of invalid pension and acceptance by several doctors of his inability to work), the AAT said 'it would be flying in the face of reality to take the view that the applicant has any meaningful residual capacity for work or to attract an employer': Reasons, para. 34.