

CHIGNOLA and DIRECTOR-GENERAL OF SOCIAL SECURITY

(No. S82/100)

Decided: 14 September 1983 by R. Balmford, J.T.B. Linn and F.A. Pascoe.

The AAT affirmed a DSS refusal to grant an invalid pension to a 53-year-old self-employed opal miner who suffered from back and neck pain as a result of certain injuries.

The applicant had the skills and assets which 'with the assistance of a physically fit partner or employee' would enable him 'to engage in the work constituted by the conduct of his business'.

STACKPOOLE and DIRECTOR-GENERAL OF SOCIAL SECURITY

(No. Q81/173)

Decided: 18 August 1983 by J.B.K. Williams

The AAT affirmed a DSS decision to cancel the invalid pension held by a 34-year-old former motor mechanic who injured his back at work.

While medical evidence supported the view that he could not engage in his former employment, he would be able to work in other areas not involving physical activity which would aggravate his back.

LENNON and DIRECTOR-GENERAL OF SOCIAL SECURITY

(No. V82/457)

Decided: 2 September 1983 by J.O. Ballard.

The Tribunal set aside a DSS refusal to grant invalid pension to a former tool maker who suffered from a shoulder injury.

The applicant was highly motivated and was willing to undergo an operation

if so advised. Medical evidence suggested that his condition would not alter as a result of any operation.

JOVANOVIC and DIRECTOR-GENERAL OF SOCIAL SECURITY

(No. Q82/52)

Decided: 14 September 1983 by J.B.K. Williams.

The AAT set aside a DSS decision to cancel the invalid pension held by a 37-year-old former electrician who suffered from injuries to his knees sustained in a motor vehicle accident.

The medical evidence suggested he suffered physical disabilities and, combined with his lack of proficiency in English and long absence from the workforce, his employment prospects would be poor.

Legislation

Social Security Legislation Amendment Act 1983 was passed on 24 October 1983. It makes significant amendments to the *Social Security Act* in particular.

The main changes are:

- The introduction of a 'remote area allowance' (by a new Part IIA) to be paid to recipients of age, invalid, and widows' and spouse carers' pension, supporting parents' benefit, unemployment and sickness benefit, sheltered employment allowance or a rehabilitation allowance and who live in a 'remote area' (as defined by a new s.17B) to be paid from 1 May 1984.
- The introduction of a 'spouse carers' pension' (by a new ss.33-34) to be paid to a man who provides, in the matrimonial home constant care and attention in respect of his wife who is a severely handicapped woman. This pension is payable from 1 December 1983.
- The amendment of the definition of income in s.18 of the Act to include

various forms of assistance but to exclude payments by way of benefit from a friendly society or in respect of illness, infirmity or old age from a trade union.

- The amendment of s.83AAA of the Act to delete references to 'supporting mother' and 'supporting father'. A new definition of 'supporting parent' means 'an unmarried person who has the custody, care and control of a child . . .' and by a new s.83AAC(1) the qualification for benefit is satisfied if one of the conditions therein applies to the supporting parent. One of those conditions covers the case of a parent who adopts a child though that parent has never married. (This overturns the decision of the AAT in 'W' (1983) 14 SSR 141.) These changes are effective from 1 December 1983.
- The definitions of 'income' in s.84 and s.106 have been altered.
- The increase in the rate of unemployment benefit for those under 18 years to

\$45 per week and those over 18 years to \$73.60 per week with an increase to \$12 for each dependent child.

- The insertion of a new Part VIIIA entitled 'claims, payments, notification, review, cancellation and related matters'. The Director-General has power to obtain information from beneficiaries (s.135TE) or other persons who he has reason to believe may have information affecting the payment of benefits, etc. (s.135TF).
- The making of a false or misleading statement in respect of claims, etc. under the Act is now punishable by a fine of up to \$2000 or up to 12 months imprisonment.

Statistics

This table of applications lodged with and decided by the AAT, is compiled from information provided by the Department of Social Security.

	Jul. 83	Aug. 83	Sept. 83	Oct. 83
Applications lodged*	112	112	96	93
Decided by AAT	36	29	10	24
Withdrawn	25	32	35	30
Conceded	37	22	36	34
No jurisdiction	7	15	5	3
Awaiting decision at end of month	1208	1222	1232	1234
*Applications lodged: type of appeal				
Medical appeal	85	88	72	55
Other appeals	37	23	21	33
FOI	0	1	3	5
State where application lodged				
ACT	1	2	0	0
NSW	50	60	47	40
NT	0	0	0	0
Qld.	6	10	11	4
SA	11	6	8	6
Tas.	0	2	3	1
Vic.	42	25	21	28
WA	2	7	6	14

Correction: The column headings of the Statistics table in 15 SSR (October 1983) were wrong. They should read April to July and not January to April as shown.

Administration

Invalid pension assessment procedures

New assessment procedures for invalid pensions were issued by the DSS on 25 October 1983. (Reference is *Pensions Instruction* 1983/92 SHQ REF:8295, *U. and S.B. Instruction* 1983/74 7637). These instructions implement the recommendations of the Joint Task Force established by the Directors-General of Social Security and Health to review invalid pension assessment procedures.

The most important changes are the discontinuance of the centralised 100% medical review of Commonwealth Medical Officer (CMO) recommendations and the shifting of primary responsibility for determination and processing of claims for invalid pensions to regional offices of the DSS.

Other changes to the procedure are:

- where a claimant lodges a claim per-

sonally an interview with the Pensions Officer is to be arranged by the Counter Officer (preferably within seven days) and the applicant is to be advised to obtain as much supporting medical evidence as possible;

- the CMO's examination should be arranged within seven days of the Pensions Officer interview if possible;
- in approving grants and continuations all relevant medical and non-medical factors have to be considered to arrive at a 'fair and correct' decision;
- if a claim is rejected or current pension cancelled, the file is to be referred to the Social Worker to assess whether adequate weight has been given to the non-medical factors;
- comprehensive reasons for the decision are to be given in all cases of rejection and cancellation.