SOCIAL SECURITY

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Opinion

The Administrative Appeals Tribunal has been deciding social security appeals for more than three years. Over that period it has made several hundred decisions, clarifying social security policy and practice across a wide variety of problem areas.

The most recent batch of AAT decisions (noted in this issue of the *Reporter*) continues the process of exploring the legal and factual difficulties thrown up by Department of Social Security decisions.

Inevitably, of course, there are sharp differences of approach between different AAT members to similar problems. Take, for example, the question whether a person's incapacity can be described as 'permanent' (for invalid pension purposes) if the person refuses medical treatment. In *Korovesis*, the Tribunal put forward a strong case for respecting the person's choice: rules developed in worker's compensation and tort law were irrelevant to social security, which provided a safety net under a person in crisis. On the other hand, in *Koutsakis*, another Tribunal applied those rules, developed in worker's compensation law, and decided that a person who 'unreasonably' refused medical treatment could not be permanently incapacitated. (The facts of *Koutsakis* provided a further complication, to which the Tribunal was apparently insensitive: the applicant's 'unreasonableness' was very much a part of the disease for which, it was said, he should have treatment.)

Another area where substantial differences of approach have emerged is that of handicapped child's allowance and school attendance. In *Ferdinand*, school attendance was said to prevent payment of any handicapped child's allowance. But a more flexible approach was taken by different Tribunals in *Arthur* and *Sposito* – although the allowance, was in the event, not awarded in the last case.

In some areas, consistency of approach does seem to have been established. The Tribunal appears generally willing to waive recovery of overpayments (exercising the discretion implied in s.140(1) and expressed in s.140(2)) where the beneficiary or pensioner had acted in good faith and the Department's administrative procedures were the principal cause of the overpayment: see *Dobrowolski*, *Kaiser* and *Floris* in this issue.

Again, a consistently flexible approach to residency has been developed. Immigrants to Australia can remain 'resident' here even during protracted absences (as long as four years in *Kalathas*) in their countries of origin: see *Kalathas* and *Nathanielsz*. And, according to the Federal Court in *Koon Lin Ho*, a woman was 'residing permanently in Australia' when her husband died, even though, at that stage, she had not even entered Australia. Decisions noted in this *Reporter* raise a number of other issues. There is criticism of Departmental attitudes in *Guven*, where the Tribunal observed that the 'purpose of social welfare is to help the needy, not to protect revenue.' There is some criticism (perhaps) of Departmental practices in *Costello*, where the DSS seems to have been illegally deducting an overpayment from another person's pension.

Certainly, the number of decisions noted in this *Reporter* must be a record. We have noted 34 decisions and listed another 46 decisions (all invalid pension cases) which are routine medical assessments and do not justify publishing a note. If the Tribunal continues to decide cases at the pace established over recent months, we shall, of necessity, continue with this practice of discriminating between significant (noted) cases and routine (listed) cases.

PH

In this issue:

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