

genic hyperventilation, the exact cause of which was unclear.

Permanency

The Tribunal decided that, insofar as his incapacity arose from his respiratory problems, it was very likely it would persist indefinitely. Insofar as his incapacity was the result of depression, for treatment to be effective the applicant would need to return to employment. Given Juraga's age and the depressed labour market, that was virtually impossible. Therefore, the Tribunal found that Juraga's incapacity was permanent for the

purpose of s.24 of the Act.

The Tribunal went on to consider the possibility of rehabilitation:

A scheme may be introduced one day for people like the applicant, under which they are placed in jobs made available specially to enable them to re-establish their self-esteem and to recreate in them a feeling that they have some economic worth in the community and to themselves. If such a scheme is introduced, it may then be possible for the applicant to be cured of his depression. So I would certainly not rule out the possibility that at some time in the future it may be reasonable for the Director-General to require the applicant to under-

take treatment or training; but, as I have observed, on the evidence that is before the Tribunal today, I think that without some such developments it would not be reasonable for him to require the applicant to do so.

(Reasons, para. 24)

Formal decision

The AAT set aside the decision under review and remitted the matter to the Director-General with a direction that Juraga was qualified to receive an invalid pension since July 1981.

Pensions outside Australia

BUTTIGIEG and DIRECTOR-GENERAL OF SOCIAL SECURITY

Decided: 5 October 1983 by R. Balmford.

Anthony Buttigieg was born in Malta in 1899. He lived in Australia from April 1922 to December 1954, when he returned to Malta to stay.

On 20 February 1980 he lodged an application for either an invalid or age pension. After rejection of this claim, Buttigieg sought review from the AAT.

Age pension outside Australia

Section 21A of the *Social Security Act* provides for payment of an age pension to a person outside Australia. To qualify, a person must have resided in Australia for at least 30 years, have left Australia before 7 May 1973, and have reached 65 years of age (if a man) within five years of leaving Australia.

That last requirement defeated Buttigieg who had left Australia in 1954 and turned 65 in 1964.

Invalid pension outside Australia

Section 24A of the Act sets out the qualifications for invalid pensions for persons outside Australia:

24A. Subject to this Act, a person above the age of 16 years who is not receiving an age pension and—

- (a) is permanently incapacitated for work or is permanently blind;
- (b) has not resided in Australia at any time since 7 May 1973;
- (c) became permanently incapacitated for work or permanently blind while in Australia or during a temporary absence from Australia; and
- (d) [repealed]
- (e) is a person who, in the opinion of the Director-General, is in special need of financial assistance, is qualified to receive an invalid pension.

The AAT said that Buttigieg met most of the requirements of s.24A. He was permanently incapacitated for work, he had left Australia before 7 May 1973, and his incapacity should be treated as having developed in Australia. This last requirement (spelt out in s.24A(c)) was satisfied because his incapacity was well established when Buttigieg left Australia. So, it had either developed in Australia or before his arrival in Australia. If it had developed before his arrival, s.25(2) had the effect of 'deeming' it to have occurred in Australia, because Buttigieg had been continuously resident in Australia for at least ten years: see *Nathanielsz* in this issue of the *Reporter*.

However, the critical question was whether Buttigieg met the requirements of

s.24A(e) of the *Social Security Act*: was he 'in special need of financial assistance'?

Evidence of the cost of living in Malta was provided to the Tribunal as was some evidence of Buttigieg's needs. (His income was from a Maltese age pension and, apart from the evidence that he lived in a house jointly owned with his two sisters, there was no evidence as to his living conditions).

Concluding that 'special need' required some need which was 'exceptional in character, quality or degree', the AAT found that Buttigieg was not 'in special need of financial assistance':

He is receiving a pension from the government of the country where he lives, which appears to be comparable with other pensions paid in that country. It must be assumed that that pension is calculated at a rate which would give the recipient an adequate income to provide a standard of living at least beyond what could be described as being 'in special need', in terms of the definition of 'special' above cited.

Thus the applicant failed to satisfy the requirements of s.24A(e) and was not qualified to receive an invalid pension.

Formal decision

The Tribunal affirmed the decision under review.

Pensions: 'continuous residence in Australia'

NATHANIELSZ and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. V82/60)

Decided: 30 September 1983 by R. Balmford.

Sheila Nathanielsz was born in Sri Lanka in 1923. She and her husband arrived in Australia in December 1975. In November 1976 she was granted permanent resident status and returned to Sri Lanka with her husband in December 1976 to 'tidy up their affairs'. She returned to Australia in March 1979.

In December 1980 she claimed an invalid pension but the DSS rejected the claim because her incapacity had not developed in Australia (as required by s.25(1)(b) of the *Social Security Act*) but pre-dated her arrival in 1975.

The DSS told Nathanielsz that she would qualify for invalid or age pension after she

had completed 10 years continuous residence in Australia. Ignoring the period 1976-79 (when she was in Sri Lanka), the DSS calculated that Nathanielsz would complete that 10 years in August 1988.

Nathanielsz asked the AAT to review the DSS decision that she had not been resident in Australia during her absence from Australia between 1976 and 1979. In practical terms, she argued that she would be qualified for invalid or age pension in December 1985 rather than August 1988. (She did not challenge the DSS decision that her incapacity predated her arrival in Australia.)

'Continuously resident' in Australia

Section 25(2) of the *Social Security Act* provides that a person, whose incapacity developed outside Australia, will qualify for invalid pension after 10 years continuous residence in Australia.

Section 21 of the Act provides that a woman who has reached 60 years of age and has been continuously resident in Australia for 10 years is qualified for age pension (so long as she is present and resident in Australia when she lodges her claim).

Section 20 sets out the meaning of 'resident' and reads (so far as is relevant):

- (1) For the purposes of this Part, a claimant shall be deemed to have been resident in Australia during a period of absence from Australia—
 - (a) if the Director-General is satisfied that, during that period, the claimant's home remained in Australia; . . .
 - (2) For the purposes of this Part, a claimant shall be deemed to have been resident in Australia—
 - (b) during a period of absence from Australia during which the claimant was a resident of Australia within the meaning of an Act