SOCIAL SECURITY

Reporter

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Comment

Three years after starting . . .

This issue completes three years of publishing for the *Social Security Reporter*. Looking back at our plans in 1981, I can see that we have not managed to achieve all our objectives: we talked then (in 1981) of keeping our readers up-to-date on a wide range of developments in social security rights: Government policy, DSS administrative guidelines, new legislation, and Tribunal procedures and decisions. As things have turned out, the *Reporter* has been dominated by Tribunal (and Federal Court) decisions. While we have not completely ignored other developments, we have not had the resources to deal with them as systematically as we had planned. Over the next year, we shall be putting more resources into developing those other aspects of the *Reporter*.

In this issue . . .

There is, of course, no question of the *Reporter* abandoning its principal function —noting recent, significant decisions of the AAT and the Federal Court on social security rights. Probably the most significant decision in the current issue is *Dragojlovic* (p.187), in which the Federal Court adopted the arguments developed by the AAT in *Korovesis* (1983) 17 *SSR* 175 and decided that a person could be 'permanently incapacitated for work', even though there was medical treatment available which could 'cure' that person, if the person genuinely refused to undergo that treatment: the 'reasonableness' of the person's refusal (critical in worker's compensation and tort law) was irrelevant for the purposes of social security law.

Also in the invalid pension area, the Federal Court has examined the question whether there is an onus of proof (to prove or disprove 'permanent incapacity') when the DSS is deciding to cancel an invalid pension: *McDonald* (p.188). The practical effect of the decision seems to be that, when a grant of invalid pension is being reviewed, there is something very like an onus of proof. The Court also discussed (and adopted a liberal approach to) the problem of predicting the chances of a person's incapacity remaining 'permanent'.

The difficult area of handicapped child's allowance for school children came up in two AAT decisions—*Busuttil* (p.182) and *Maroney* (p.182). The former case followed the hard line first laid down in *Schramm* (1982) 10 *SSR* 98—the allowance could not be paid. But, in *Maroney*, R. K. Todd, who had decided *Schramm*, said (in effect) that that decision should not be followed and that the allowance could be paid, depending on the circumstances. (*Maroney* also contains some strong criticism of the drafting of the legislation and a call for urgent reform.)

Other significant decisions include *Wood* (p.185), where the Tribunal decided that a student who had surrendered her TEAS allowance because of illness had not 'suffered a loss of . . . income' and so, before 31 December 1982, could not qualify for sickness benefit and after that date could only receive sickness benefit at the rate of unemployment benefit. (This decision appears to go even further than the restrictive administrative approach adopted by the DSS in July 1982: see (1982) 10 *SSR* 103.)

Finally, the Tribunal decision in *Houchar* contains a thorough discussion of the concepts of 'residence in Australia' and 'temporary absence', upon which payment of many pensions and allowances depend (in this case, family allowance).

P.H.

In this issue:

AAT decisions
- Handicapped child's allowance: attendance at school (*Maroney*) (*Busuttil*) ... 182
- Overpayment: discretion to recover (*Sames*) (*Gjokamaj*) ... 183
- Family allowance: 'residence' and 'absence' (*Houchar*) ... 184
- Sickness benefit: loss of income (*Wood*) ... 185
- Child endowment: child in institution (*Gray*) ... 186
- Invalid pension: permanent incapacity (*Ralston*) (*Stamberg*) ... 186 (*Foskett*) (*Chiavaralotti*) : 187 (*Arnold*) ... 187

Federal Court decisions
- Invalid pension: medical treatment (*Dragojlovic*) ... 187
- Invalid pension: proving 'permanent incapacity' (*McDonald*) ... 188

Background
- Incapacity for work: what happens when the work dries up? ...190

Administration
- Freedom of Information in social security ...191

Index ...192

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Please address **all correspondence** to Legal Service Bulletin, C/- Law Faculty, Monash University, Clayton 3168.