

SOCIAL SECURITY

Reporter

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Comment

Invalid pension reviews continue to figure large in the Tribunal's work; although, by now, the Tribunal and the Federal Court have established the framework within which most of these reviews will be decided. In *Alchin*, *Bonello* and *Batzinas*, the AAT emphasized that the applicant's incapacity for work does not only depend on an assessment of physical ailments: 'one cannot isolate a human being into sections'; the psychological condition must also be considered, along with the applicant's work skills and experience. The AAT also stressed, in *Bonello*, *Sanderson* and *Zammit*, that capacity for work depended on the applicant's chances of *obtaining* work as well as her or his capacity to *do* that work. So, applicants who had some residual capacity for light work were nevertheless incapacitated for work, because they had practically no chance of persuading an employer to hire them. In this context, the decision in *Wake-ling* seems to be running against the tide.

Handicapped child's allowance is now emerging as the second largest problem area in AAT reviews. This is partly a reflection of the complexity (and absurd contradictions) of Part VIB of the *Social Security Act* — an aspect which the Tribunal has criticised many times: see, for example, *Maroney* (1984) 18 *SSR* 182. But, as the decisions in this *Reporter* show, the large number of applications for review also reflects the 'low profile' of this programme: many parents of handicapped children do not learn about the allowance until years after their children are born, and consequently are now asking for the allowance to be back-dated.

This *Reporter* carries three decisions, *Colussi*, *Damalas*, and *Puccini*, where the AAT allowed back-dating of the allow-

ance — a significant liberalisation, given the rather rigid pattern of earlier decisions. (Those three decisions don't involve a radical departure from the earlier approach but exploit, in a constructive fashion, some of the ideas developed in the early decisions.)

Another problem is the assessment of 'severe financial hardship' for the allowance. In *Yatmas*, the Tribunal followed the DSS guidelines which measured family income against the average award wage. In *Went*, the AAT did not mention these guidelines and asked (in effect) whether the family income covered necessities. But in *Colussi*, the AAT concentrated on the income of the caring parent — had *her* financial circumstances been severely affected?

Other significant decisions in this *Reporter* include:

- *Keuker*, where the Tribunal set out, in a model of clarity, the factors which control the discretion to recover overpayments;
- *Pennisi*, where the Tribunal demonstrated the value of legal ingenuity in measuring a period of 12 months (to allow a pensioner to take his pension back to Italy);
- *Baptist*, where the Tribunal rejected a DSS argument that special benefit should not be granted to overcome a person's ineligibility for age pension; and
- *O'Brien*, where the Tribunal looked once again at the difficult problem of 'separation under one roof': when are a husband and wife, living in the same house, 'separated'?

This issue of the *Reporter* also carries the second part of our abbreviated guide to Freedom of Information — this time,

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We look at reviews of and appeals against FOI decisions of the Department of Social Security.

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