

# SOCIAL SECURITY



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## Comment

Invalid pension and handicapped child's allowance reviews continue to dominate the AAT's caseload: the invalid pension decisions noted in this issue do not raise new or complex issues; but the Tribunal is still struggling to develop a consistent and defensible approach to handicapped child's allowance. In this issue, we note several decisions on the question of late claims and backdating the allowance. These decisions confirm the generally negative (with some exceptions) pattern of AAT decisions: the failure of medical and welfare workers to advise a parent of her rights is not a 'special circumstance' to permit backdating, (*Beadle, Blurton*); nor is an unstable domestic situation (*Parkyn, Blurton*); nor is a prolonged absence from Australia (*Hampton*) or from urban areas (*Parkyn*). However, misleading advice given by DSS officers can be a 'special circumstance' (*Garrety*); and, perhaps more significantly in the long term, inadequate DSS publicity of the allowance might contribute to 'special circumstances' (*Corbett, Johns*).

The last two decisions also raise cultural isolation (in those cases, of Aborigines) as a special circumstance: see *Damalas and Puccini* (1984) 19 SSR 195 for a similar approach. It is unfortunate that, in *Corbett*, the AAT supported this approach by using Oscar Lewis' stigmatizing, coercive and discredited theory on the 'culture of poverty'. If the Tribunal regards that theory as an adequate explanation of the nature of poverty, we should not be surprised that, in both *Corbett* and *Johns*, the Tribunal said that, even if there were special circumstances to justify backpayment, that payment was discretionary; and this discretion would be exercised sparingly.

There is at least a suggestion, in those two decisions, of the notion that poor people should not be given 'wind-falls' of large amounts of money because they cannot be expected to handle such 'wind-falls' — an attitude very much in line with Lewis' theory on the 'culture of poverty'.

While the complexities of handicapped child's allowance have a certain untidy fascination, there is much more to the social security work of the AAT, as this issue shows. Other decisions review a wide range of problems:

- *Sakaci* looks at the payment of special benefit covered by migrant guarantees — an issue now addressed by new DSS instructions: see the Administration section of this issue. The decision in *Sakaci* produced something of a catch-22 for the applicant: a dilemma which the new DSS guidelines avoid.
- *Kirsch* looks at income support for farmers affected by the 1982-83 drought.
- *Poursanidis* reviews, and criticizes, some strange DSS practices in the recovery of family allowance overpayments.
- *Dixon* demonstrates the flexibility of the *Social Security Act* (in the hands of a creative Tribunal) in providing backpayment of an invalid pension.
- *English* is another example of creative thinking by the AAT — on this occasion in the manipulation of ideas of residence and domicile.
- *Besgrove* and *Castronuovo* look at DSS recovery of sickness benefits from compensation and damages awards. Although decided under the old s.115 (replaced in August 1982), the discussion of principles in those cases should be relevant to the replacement provisions.

P.H.

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