SOCIAL SECURITY

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Comment

Once again, handicapped child's allowance problems dominate the *Reporter*. In what must surely be definitive decisions, the AAT has held that a handicapped child's school attendance cannot defeat a parent's claim for the allowance.

In *Shingles* (p.230), the AAT used the recently-enacted ss.15AA and 15AB of the *Acts Interpretation Act*, which permit reference to 'extrinsic material' when interpreting ambiguous or unreasonable and absurd provisions. The 1974 second reading speech of Social Security Minister Hayden showed that school attendance was not intended to prevent eligibility.

The AAT took a different route to the same end in *Seager* (p.230): it said that the 'moderately small' allowance should not be treated as being paid for full-time care and attention. Moreover, the facts that the allowance was paid monthly and that it was granted for a long term disability meant that 'constant care and attention' should be measured over a period of months rather than days, so that a child's absence at school for 7 hours, 5 days a week, would not defeat eligibility.

Earlier Tribunal decisions have disagreed over the assessment of 'severe financial hardship': see *Sposito* (1983) 17 *SSR* and *Colussi* (1984) 19 *SSR* 195. In the second *Colussi* decision (p.233), the AAT has repeated its insistence that, where eligibility for the allowance depends on financial hardship (as it does under s.105JA), the DSS must concentrate on the position of the caring parent, rather than on family income; and that the same approach must be taken when fixing the level of the allowance.

Blurton (p.234) is a decision which deserves a critical reading. A cynic might observe that the AAT's failure to see anything 'special' about a mother of 3 children being subjected to continual and severe domestic violence was no more than a perceptive recognition of the role of women as victims in our society. A more plausible explanation would concentrate on the limited capacity of AAT members to grasp the reality of life on the margin of comfortable society. This type of explanation is reinforced by the refusal of the AAT to treat as 'special' another circumstance which it went so far as to describe as 'extraordinary'—the failure of the DSS and a welfare agency to alert Blurton to possible eligibility for the allowance on the many occasions when they saw her over some 6 years.

The wide range of the Director-General's discretion to grant a special benefit (under s.124) came under review in several decisions. In *Macapagal* (p.236), the AAT decided, as it had in *Sakaci* (1984) 20 *SSR* 221, that the existence of a 'maintenance guarantee' should not prevent a migrant qualifying for special benefit; but, in *Macapagal*, the AAT found a neat and sensible solution to the dilemma left by *Sakaci*, where the applicant was said to be ineligible for any special benefit because he was receiving board and lodging from a relative.

The issues presented in *Ezekiel* raise questions (about the policies of the DSS) which are as disturbing as those presented in the several maintenance guarantee cases. Apart from the true 'Catch-22' situation in which Ezekiel was placed, the case demonstrates the narrowness of the DSS' perception of the phrase 'sufficient livelihood' in s.124.

Other significant decisions include

- *Galati*—a thorough analysis of the purpose of many of the residence provisions of the *Social Security Act*, particularly as they affect former immigrants to Australia;
- *Nadenbousch*—a warning to the 'retirement planning' industry: avoidance of the income (and soon, assets) test is more difficult than avoidance of income tax.

PH

In this issue:

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

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