Macapagal be granted a special benefit from 14 April 1980; and that the rate of this benefit be the applicable rate of unemployment benefit, less two-thirds for any period when he and his wife were living with their daughter and son-in-law.

Special benefit: drought affected farmer

WATTS and DIRECTOR-GENERAL OF SOCIAL SECURITY
(No. Q84/17)
Decided: 3 September 1984 by J.D. Davies J, W.A. De Maria and H. M. Pavlin.

In a majority decision, the AAT *set aside* a DSS decision to refuse special benefit to Ian Watts for a period of 8 months in 1983.

Over that period Watts and his wife had owned and farmed a rural property which had been severely affected by drought and flood. The property had been producing no income and Watts told the AAT that, by borrowing some $15 500, he had exhausted his borrowing capacity. Both Watts and his wife told the AAT that his wife was absolutely opposed to borrowing money on the security of their jointly owned property. That step, his wife had said, would create the substantial risk that they could lose the property and be left with nothing.

The DSS supported its refusal of a special benefit by claiming that Watts had not exhausted his borrowing capacity and that special benefit did not extend to a claimant who was engaged in some uneconomic activity.

The majority members of the AAT, **De Maria and Pavlin**, said that the refusal of Watts' wife to allow their property to be mortgaged was a valid reason for not seeking a further loan; it had, in the words of Pavlin, 'a sound business basis and not merely an emotional one':

> Should they have been expected to risk their very home and livelihood and, thus, way of life, by mortgaging their property when they already saw themselves facing the repayment of massive debts accumulated during the series of climactic disasters? In my view, this is not a reasonable expectation. Nor is it demanded of ordinary non-farming house owners that they should mortgage their home before their level of need is seen as sufficiently great to warrant discretionary social welfare assistance.

(Reasons, p. 22)

Moreover, the majority members said, the farming enterprise was not a long term uneconomic venture but a potentially profitable activity which had been temporarily set back by adverse weather conditions. Accordingly, in their view this was a proper case for the exercise of the Director-General's discretion under s.124 (1).

Davies J dissented. He said that this was not a proper case for the favourable exercise of the discretion in s.124(1): Watts and his wife had an unencumbered property and, therefore, there were avenues of finance available to them during the period for which Watts sought a special benefit. He said that s.124 did not operate to support a person who needed that support because it was not obtainable from any other suitable source:

> Almost all farmers have borrowing potential and financial institutions have come to accept the highs and lows of the businesses of farming or grazing. Financial institutions recognise that such businesses must be supported and even for quite long periods. Therefore, borrowing is a means of subsistence which farmers and graziers have long ago learnt to use.

(Reasons p.7)

Special benefit: psychiatric patient

EZEKIEL and DIRECTOR-GENERAL OF SOCIAL SECURITY
(No. N84/166)
Decided: 5 September 1984 by B. J. McMahon.

Matilda Ezekiel arrived in Australia in 1976 on a visitor's visa after her sister and brother-in-law had signed a maintenance guarantee, promising (to the Commonwealth Government) to support her. In October 1979 she was admitted as an involuntary patient to a psychiatric hospital and had been there ever since.

Ezekiel was granted a special benefit in August 1979, which was reduced in the light of the maintenance guarantor's financial position. The benefit was cancelled in August 1982 on the ground that she had a sufficient livelihood while a resident of the psychiatric hospital (and not on the ground of the maintenance guarantee—the guarantors were not providing any support to Ezekiel).

The evidence

The senior social worker at the hospital stated that Ezekiel suffered from a chronic disabling schizophrenic illness and was mildly mentally retarded. The social worker said that hospitalisation was inappropriate in her case. The hosptial wished to provide Ezekiel with a social skills training programme and organise accommodation for her in the community, and had wished to do so for some years. The only reason they had not offered Ezekiel such a programme was her lack of income.

The DSS agreed that, after her discharge from hospital, she would be entitled to special benefit. 'The catch 22 situation was that until she was released she could not receive it': Reasons, p.5. The hospital could not release her in these circumstances—'medically it would be unthinkable'.

The legislation

Section 124(1) of the *Social Security Act* provides:

> . . . the Director-General may, in his discretion, grant a special benefit . . . to a person
> (c) with respect to whom the Director-General is satisfied that, by reason of age, physical or mental disability or domestic circumstances . . . that person is unable to earn a sufficient livelihood.

What is a 'sufficient livelihood'?

The Tribunal criticised the tendency to interpret 'earn a sufficient livelihood' as meaning 'in receipt of a sufficient livelihood' and went on to consider what a sufficient livelihood might be:

> there must be a level between mere subsistence and hedonistic indulgence that should be regarded by the community as tolerable to the person concerned and acceptable to the community generally as existing in its midst. It must be a level of existence that would at least comply with our international obligations. It must be a level of existence of which we would not be ashamed, were it to be known throughout the world as being tolerated in this community. It must be a level of existence consistent with our own conscience and standards that we would apply to ourselves. It must be a level of existence above mere animal survival, recognising other factors that go to sustain life in our community.

The Tribunal then considered what other factors the Director-General should take into account in exercising his discretion, which 'ought to be exercised with compassion'. These included the applicant's health, her sense of security (see *Blackburn* (1982) 5 *SSR* 53) and the fact that, if she lived in a boarding house the people on whom she could depend would be wider, thus increasing her sense of psychological security.

The Tribunal also suggested a number of more public considerations: the cost of maintaining a person in an institution rather than the community; the fact that Ezekiel's release would make an institutional bed available for someone who was more seriously ill; and, finally, the fact that Ezekiel would become eligible for invalid pension in 17 months, when she had completed 10 years residence in Australia—so that special benefit would serve its function as a short term benefit.

The Tribunal recommended that payment of the benefit should be backdated to the date of cancellation, thus allowing Ezekiel a small fund for the exingencies of life outside the hospital and to allow her to buy clothes and other basic necessities. The Tribunal also recommended that the benefit be paid at the full rate, given that the guarantors were not providing any support.

Formal decision

The AAT set aside the decision under review and directed that special benefit be paid at the full rate from its date of cancellation in August 1982.