

**TRIANTAFILLOPOULOS and
DIRECTOR-GENERAL OF
SOCIAL SECURITY**

(No. V83/297)

Decided: 13 July by J. Dwyer.

Ekaterina Triantafillopoulos had been granted family allowance for her children in 1967. In 1972, she, her husband and their children travelled to Greece where they stayed until 1982. During Triantafillopoulos's absence from Australia, the DSS suspended payment of the family allowance. On her return to Australia in 1982, she applied for payment of family allowance for the period of 10 years during which she and her children were living outside Australia.

When the DSS refused to make that payment, she sought review by the AAT.

The Legislation

Section 103(1) provides that a family allowance is not payable if the person granted the allowance ceases to have her usual place of residence in Australia, unless her absence is temporary only; or the child, for whom the allowance is granted, ceases to be in Australia, unless the child's absence is temporary only.

The Tribunal's Assessment

The AAT noted that the Triantafillopoulos family had sold their major assets in Australia (2 houses and a truck) before or shortly after travelling to Greece; that the husband had started a business in Greece and paid income tax and voted there; that the children had attended schooling in Greece; and that the family had lived, for 10 years, at one place in Greece. In the light of that evidence, the AAT concluded that the 'usual place of residence' of Triantafillopoulos had, for the 10 years of her stay in Greece, being in Greece and not in Australia.

Moreover, Triantafillopoulos's absence from Australia had not been, during that 10 year period, 'temporary only'. As the AAT had said in *Houchar* (1984) 18 SSR 184:

For an absence to be temporary, not only must it be intended not to last indefinitely but the time for which it is intended to last must not be of great length.

Moreover, the question whether her absence was 'temporary only' was to be decided by examining a person's intention during her absence or rather at different stages of that absence. In the present case, it could not be said that, at the time when Triantafillopoulos had

left Australia, there was a 'fixed time when the visit to Greece would finish or a fixed event which would determine the date of return to Australia':
Reasons, para.16.

This case was different from *Kehagias* (1981) 4 SSR 42 and *Alam* (1982) 8 SSR 80: neither Triantafillopoulos nor her husband were Australian citizens when they left Australia, as the applicants had been in those cases; their absence from Australia was not 4½ or 5 years as in those cases, but over 10 years; no member of Triantafillopoulos' family had remained in Australia as had the parents of Mrs Kehagias; and Triantafillopoulos had not kept a bank account in Australia during her absence as had the applicants in those two cases.

It followed, the AAT said, that s.103(1) applied to Triantafillopoulos and that the child endowment granted to her in 1967 had ceased to be payable when she and her children left Australia.

Formal Decision

The AAT affirmed the decision under review.

Cohabitation rule: separation under one roof

**JOHNSTONE and DIRECTOR-
GENERAL OF SOCIAL SECURITY**

(No. V83/47)

Decided: 6 August 1984 by R. Balmford.

The AAT affirmed a DSS decision that the applicant was not eligible for supporting parent's benefit between February 1981 and December 1981.

The critical question before the Tribunal was whether, during that period, Johnstone was 'living apart from her husband' and so within the definition of 'supporting mother' within s.83AAA(1) of the *Social Security Act*.

The Tribunal was told that Johnstone and her husband, who had married in 1967, had separated in December 1980 but that, after a period in a psychiatric hospital, Johnstone's husband had returned to the matrimonial home in February 1981.

Johnstone told the Tribunal that, over the period between February and December 1981, she and her husband had lived separately in the one house, with practically no communication between them and occupying separate rooms. She also told the Tribunal of an incident of domestic violence in April 1981 which had been attended by the local police.

On the other hand, Johnstone's husband told the Tribunal that, during 1981, he and Johnstone had lived as a married couple: they had slept together and had shared their meals, social lives and their financial affairs.

The Tribunal was also told that Johnstone had been employed in a regional office of the DSS for some 8 years and that, in December 1981, she had pleaded guilty to charges of lodging false claims on the DSS totalling some \$50 000.

The AAT referred to an earlier decision in *Reid* (1981) 3 SSR 31, where it had been said that, in cases such as this, family law decisions were a good guide to deciding whether a married person was living apart from her spouse. The AAT noted that in *Pavey* (1976) 10 ALR 259, the Family Court had said that, in deciding whether a marriage had irretrievably broken down, it should be remembered that this was unlikely where the married couple continued to live in the same residence: although there was no inflexible rule, it was a good practice to require corroboration of evidence where the parties continued to live in the same house.

The AAT said that, given the circumstances this case (which involved conflicting evidence and an applicant who had pleaded guilty to charges of lodging false claims while in a position of trust, and who now stood to gain some thousands of dollars), it could not accept, without corroboration, her claim that she and her husband were living separately under the same roof for most of 1981.

Statistics

These tables (dealing with AAT reviews) are compiled from information supplied by the Department of Social Security.

	Apr. 84	May 84	Jun. 84	Jul. 83
Applications lodged*	48	55	73	43
Decided by AAT	25	31	29	53
Withdrawn	30	37	26	34
Conceded	29	83	35	40
No Jurisdiction	3	1	1	7
Awaiting decision at end of month	1082	985	967	876

*** Applications lodged: type of appeal**

Unemployment B.	4	6	15	8
Sickness B.	2	9	0	6
Special B.	3	3	3	1
Age Pension	6	1	8	1
Invalid Pension	24	22	27	18
Widow's Pension	0	3	5	0
Supp. Parent's B.	3	1	3	1
H.C.A.	3	2	6	3
Family Allow.	2	4	6	2
F.O.I.	1	3	0	1
Other	0	1	0	2

State where application lodged

ACT	0	0	5	4
NSW	16	25	31	8
NT	0	0	0	1
Qld	6	7	6	8
SA	4	4	4	7
Tas.	1	2	1	1
Vic.	16	12	19	8
WA	5	5	7	6