fit which she is anxious to receive in view of worries which would, in truth, be more consonant with what may well be a future need. At the moment however it is not possible to make a finding in favour of entitlement.

(Reasons, paras 17, 18).

### MONTELEONE and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. N83/766)

**Decided:** 5 October 1984 by B.J. McMahon.

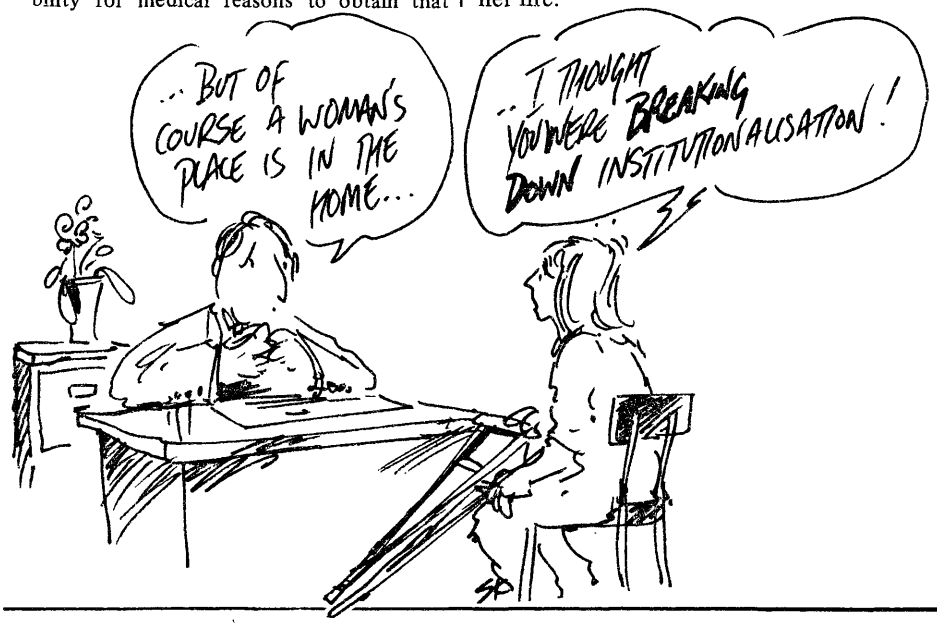
The AAT set aside a DSS decision to cancel an invalid pension held by a 42-year-old married woman who suffered from chronic depression.

In the course of deciding this matter, the AAT discussed an issue raised by the DSS. The Tribunal noted that Monteleone had last worked in 1966, when her first child had been born. She now had 4 children aged between 14 and 18. The AAT continued:

> If paid outside employment has not formed part of a woman's life pattern than an inability for medical reasons to obtain that employment may not fall within section 24 of the Act. If a woman is prevented by other factors, e.g. the need to look after young children, from obtaining outside employment then her inability for medical reasons to obtain that employment may also not fall within section 24 of the Act . . .
>
> I have not been referred to any case in which the Tribunal has addressed itself to this problem. It could easily arise in the case of a medically incapacitated woman with young children requiring constant attention whose husband is unemployed. Does the loss of the capacity to earn a wage in those circumstances mean anything if there is no practical possibility, in the absence of the disability, of earning that wage? The present application does not pose the question in such absolute terms.

(Reasons, pp. 10-11).

The AAT said that, in the present case, this type of argument could not defeat Monteleone's claim: the family income was so low that there was a real financial motivation for her to rejoin the workforce and unskilled paid work had formed part of the earlier pattern of her life.




### BOX and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. N83/561)

**Decided:** 28 September 1984 by R.K. Todd.

The AAT *affirmed* a DSS decision to refuse an invalid pension to a 47-year-old woman who, because of a combination of organic and psychological disability, was unfit for anything other than light work.

The Tribunal found that Box was capable of working as a dressmaker but that employment prospects in the area where she lived (the north coast of New South Wales) were very poor. The AAT said:

> 26. The Tribunal has constantly emphasised that an assessment of incapacity for work requires consideration not only of physical and/or mental disability but also of the ability of the applicant, given the presence of that disability or disabilities, to obtain and hold remunerative employment. But mere inability to obtain employment because of the state of the labour market does not qualify as a consideration for the purpose of coming to the requisite conclusion in relation to a claim for invalid pension.
>
> 27. Undoubtedly, the present applicant has a not insignificant degree of disability, and it is also true that she does not have strong employment skills, qualifications or experience. But having taken into account all of the factors, both subjective and objective, that have been put before me, and conceding the presence of a degree of disability in the applicant, and also the lack of strong job skills, qualifications or experience enabling her to find remunerative employment, I am nevertheless driven to the conclusion in this case that the applicant's degree of permanent incapacity is not so substantial as to justify a finding of entitlement to invalid pension. Her incapacity to obtain work is made up of a number of facets, but the facets which are relevant to the criteria requisite for a grant of invalid pension are not in my opinion present to the required extent. Her remaining problems lie in the employment market in the Ballina area, as set out above.

# Freedom of information

### K and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. N83/784)

**Decided: 6 July 1984 by R. Smart.**

K applied to the DSS, under s.11 of the *Freedom of Information Act*, for access to his file. The DSS refused direct access under s.41(3) of the *FOI Act*.K asked the AAT to review that decision.

**The legislation**

Section 41(3) of the *FOI Act* provides that an agency may provide a person with restricted access (ie, through a nominated medical practitioner) to any of its documents which contain medical or psychiatric information about that person, where –

> the disclosure of the information to that person might be prejudicial to the physical or mental health of that person.

**Disclosure prevented**

The document in question was a medical report, marked 'confidential', provided by K's doctor to a Commonwealth Medical Officer. Reviewing the document, the AAT said that it contained medical or psychiatric information about K.

Second, the AAT said, there was a 'real and tangible possibility of prejudice to the physical or mental health or well-being of the applicant' if the information were disclosed to him when he was not taking his medication, which controlled his schizophrenic condition.

Third, the AAT said that there was a real risk of K not taking his medication regularly. (This assessment was based on evidence given by K's current medical practitioner – not the one who had furnished the original report.) Had it not been for that risk, the AAT said, it might have exercised the discretion in s.41(3) of the *FOI Act*: but, given the risk, the discretion should be exercised against direct disclosure to K.

Moreover, the AAT said, the report could be exempt from disclosure because its disclosure would be a breach of confidence under S.45 of the *FOI Act*:

> It was properly marked 'Confidential' by its author and its contents were, in my view, of a confidential kind designed to assist in the management of the applicant. It is important that doctors be free to write confidential reports in cases such as this.

(Reasons, p.8)

**Formal decision**

The AAT affirmed the decision under review.