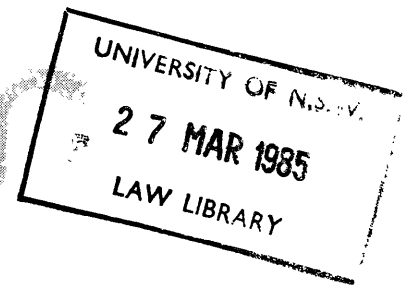


# SOCIAL SECURITY

## Reporter



Number 23 February 1985

### Comment

Goodbye Director-General; hello Secretary! As from 13 December 1984, the head of the DSS (along with the heads of all Commonwealth departments) is to be called the Secretary. This change will also affect the titles of lesser mandarins in the DSS; but will have no substantive effect on powers and discretions under the *Social Security Act*.

Two recent AAT decisions demonstrate the depth of the discretion which the Secretary has, under s.140, when deciding whether to recover an overpayment. In *Nasman* (p.267), the AAT stressed that the very broad recovery power given by s.140(2) had to be used with particular caution; and neither the DSS nor the AAT should make a value judgment about a pensioner's spending habits when assessing the financial hardship involved in recovery. In *Nem* (p.268), the AAT emphasized the vulnerable situation of a Kampuchean refugee and Australia's obligations under the Refugee Status Convention, when deciding that the discretion should be exercised against recovery.

Parents seeking backpayment of handicapped child's allowance are still having little success: although the AAT appears reader to find 'special circumstances' than in some previous decisions (see, for an example of the earlier attitude, *Beadle* (1984) 20 SSR 210), applicants must still convince the AAT to exercise the discretion discovered in *Johns* and *Corbett* (1984) 20 SSR 211 & 210. Appeals against those 2 decisions have been taken to the Federal Court; but, the AAT has pointed out in *McGrath* (p.273), they will be followed in the interests of consistency, until they are reversed.

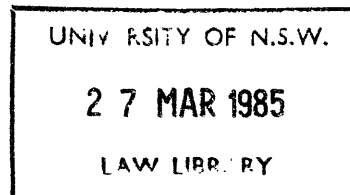
By way of contrast, the AAT felt free to depart from earlier decisions in *Hurrell* (p.266), where it decided that a retrospective payment of unemployment benefit could be made to a person whose benefit had been wrongly suspended for 5 months,

even though that person had not lodged fortnightly benefit continuation forms during those 5 months. The AAT rejected a DSS argument that unemployment benefit could only be granted in fortnightly blocks after the fortnightly lodging of claim or continuation forms, and decided not to follow the earlier decision in *Turner* (1983) 17 SSR 205.

*Hurrell* is important because it deals with several other issues: can the DSS demand a beneficiary's residential address; can benefits be paid at the married rate while de facto spouses are separated; must a claim for sickness benefit always be supported by a medical certificate?

The decision in *Wilson* (p.271) dealt with the very complex area of reciprocal pension rights (under agreements between Australia, New Zealand and the United Kingdom). At a time when the NZ agreement is being re-negotiated and a new agreement with Italy has almost been concluded, this decision is particularly valuable because of its careful charting the maze formed by the Act, the Regulations, the Agreements and DSS policies.

P.H.



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