Federal Court Decision

McBAY v DIRECTOR-GENERAL OF SOCIAL SECURITY (Federal Court of Australia)

Decided: 15 February 1985 by Wilcox J.

This was an appeal, under s.44(1) of the *AAT Act*, against a decision of the AAT affirming a DSS decision to reject McBay's claim for invalid pension.

In this appeal, McBay claimed that the AAT had made an error of law because the only conclusion available to it from the evidence before it was that he was qualified for invalid pension.

The medical evidence given to the AAT was that, because of his medical disability, McBay could only hope to find a very generous employer who would employ him for a few hours a day, allow him to take frequent rests and days off work from time to time; and that there was no such employment available.

The Federal Court referred at length to the Reasons in *Panke* (1981) 2 *SSR* 9, where the AAT had said that 'permanent incapacity for work' could only be assessed in the light of the work available to a particular applicant. The Court said that the reasoning in *Panke* was persuasive and that it was 'appropriate to deal with the present matter on the basis, without so deciding for myself, that the principles set out in the decision are correct': Judgment, p.17. The Court concluded:

> It follows that, once it is accepted, as *Panke* requires, that regard must be had to the availability of work for the particular applicant, with his particular disability, the only conclusion open to the Tribunal upon the evidence was that Mr McBay is permanently incapacitated. The Tribunal should have allowed his appeal. As this is a conclusion of law there is no advantage to be gained by my remitting the matter to the Tribunal. Section 44(4) of the AAT Act empowers this court, in determining an appeal to it against a decision of the Tribunal, to make such order as it thinks appropriate by reason of its decision.

Formal order

The Federal Court allowed the appeal and remitted the matter to the Director-General with a direction that McBay had been permanently incapacitated for work since the date of his claim.

HALDANE-STEVENSON v DIRECTOR OF SOCIAL SECURITY (Federal Court of Australia)

Decided: 1 February 1985 by Neaves J.

This was an appeal, under s.44(1) of the *AAT Act*, against the AAT decision in *Haldane-Stevenson* (1984) 19 *SSR* 205. In that decision, the AAT affirmed a DSS decision to treat all of Haldane-Stevenson's income (from various sources) as 'income' for the purposes of the age pension income test; and had rejected his argument that expenses incurred by him in the writing of a book (to be published in several years time) should be deducted from his income.

The Federal Court said that, even if expenses related to the earning of income could be set off against that income under the *Social Security Act*, Haldane-Stevenson could not deduct the expenses associated with his book writing venture. Such an approach—

> provides no support for the view that, in ascertaining the applicant's annual rate of income in respect of a period well before any royalties from the sale of his book are likely to be received, expenditure incurred in or in connection with research for, and the writing of the book may be deducted from moneys received during that period from sources having no connection in a legal sense with the writing of the book. There is, in my view, nothing in the language of the definition of 'income' which requires or indeed, permits the deduction of amounts of income admittedly derived from other sources by reference to items of expenditure incurred in pursuing an activity which, at the time the annual rate of income is being determined, has not produced any monetary benefit or gain.

(Judgment, pp.6–7)

The Federal Court also rejected the argument that, because Haldane-Stevenson was an ordained clergyman, the writing of books was within his normal terms of employment, so that expenditure associated with book writing could be deducted from the income received by way of pension from his church. Such expenditure, the Federal Court said, was not 'expenditure incurred, or necessarily incurred, in earning [that] income', even if deduction of necessary expenditure were permitted under the *Social Security Act*.

Formal decision

The Federal Court dismissed the appeal.

Statistics

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

	Nov. 84	Dec. 84	Jan. 85	Feb. 85
Applications lodged*	49	48	49	29
Decided by AAT	18	18	28	13
Withdrawn	23	12	18	19
Conceded	27	15	27	26
No jurisdiction	2	0	3	3
Awaiting decision at end of month	781	784	757	725
***Applications lodged: type of appeal**				
Unemployment B	12	6	4	5
Sickness B	2	3	4	2
Special B	1	1	2	1
Age Pension	3	2	5	3
Invalid Pension	21	19	18	11
Widow's Pension	1	3	2	2
Supp. Parent's B	2	1	3	1
HCA	5	3	3	2
Family Allow.	0	5	2	0
FOI	2	2	6	1
Other	0	3	0	1
State where application lodged				
ACT	0	1	1	0
NSW	26	15	21	15
NT	0	0	0	0
Qld	2	4	8	3
SA	2	4	4	3
Tas.	7	1	0	0
Vic.	8	19	6	1
WA	4	4	9	7