Rent assistance: 'government rent'

PARKYNS and SECRETARY TO DSS

(No. N84/428)

Decided: 10 May 1985 by J. R. Dwyer, J. H. McClintock and G. F. Sutton.

Beryl Parkyns had been granted an invalid pension in 1976. In 1980, she was granted supplementary assistance under s.30A of the *Social Security Act* because she was paying board and lodging to her mother, who was then a tenant of a Housing Commission flat.

In February 1983, Parkyns' mother died and Parkyns took over the tenancy of the flat. The DSS then cancelled payment of supplementary assistance to Parkyns because she was now paying 'government rent' for which supplementary assistance was not available.

Parkyns asked the AAT to review that decision.

The legislation

Before February 1982, s.30A provided that a pensioner who was paying rent (including board and lodging) was eligible for supplementary assistance. As from February 1982, the definition of rent was amended to exclude 'government rent'.

However, the *Social Service Amendment Act* 1981, which made this change, preserved the right of persons who were paying 'government rent' and receiving supplementary assistance before February 1982 to continue to receive that assistance.

Right to rent assistance not preserved

The AAT decided that Parkyns' right to receive supplementary assistance was not preserved by the 1981 amending legislation, because the transition provision in that legislation applied only to those pensioners who were, prior to February 1982, paying 'government rent'. Parkyns, the AAT said, was paying board and lodging to her mother and not 'government rent' prior to February 1982.

The Tribunal rejected Parkyns' argument that, because she actually attended at the office of the Housing Commission and handed over the rental payments on behalf of her mother, she fell within the protection of the transition provision—that is, that she was the person who was paying the government rent. The AAT said that a person, like Parkyns, who paid rent on behalf of another person was not the person who was paying the rent.

Because Parkyn did not qualify for the protection of the transition provision in the 1981 Amendment Act, she lost her right to supplementary assistance when she ceased to pay board and lodging and began to pay rent direct to the housing commission in February 1983.

Formal decision

The AAT affirmed the decision under review.

Age pension: payment overseas

SCHLAGETER and SECRETARY TO DSS

(No. V83/437)

Decided: 7 February 1985 by I. R. Thompson.

The AAT *affirmed* a DSS decision to reject a claim for age pension lodged by Paul Schlageter.

Schlageter had migrated to Australia from Switzerland in 1951; and, after 20 years residence here, had left Australia for Switzerland in 1972. He returned to Australia in February 1983 and claimed an age pension, declaring that he had returned for the sole purpose of claiming that pension and that he would return to Switzerland permanently within two months.

The AAT said that, to qualify for age pension, a claimant must be 'residing in . . . Australia on the date on which he lodges his claim for a pension': s.21(1)(b) of the *Social Security Act*.

But Schlageter had not met that requirement. In February 1983, Australia was not his settled permanent home; nor did he have a 'deemed' residence in Australia under s.20(1) as it stood in February 1983—his home had not remained in Australia during his 11-year absence.

Finally, Schlageter was not a 'deemed' resident of Australia under s.20(2): he had not retained his Australian domicile but had reverted to his Swiss domicile after leaving Australia in 1972.

The AAT noted that Schlageter could not qualify for age pension under s.21A because he had not resided in Australia for a total of 30 years, even though he met most of the other requirements of that section.

The AAT concluded that Schlageter should not be granted a special benefit under s.124 of the *Social Security Act*. Even if he was 'unable to earn a sufficient livelihood', the discretion in s.124 should not be exercised in his favour:

> 18. It is, I consider, significant that Parliament has made express provision for the granting of age pensions to persons who are resident in Australia and who are in special need of financial assistance and in doing so has set a period of 30 years' residence in Australia as a qualification. The circumstances would need to be exceptional for a special benefit to be granted in circumstances for which s.21A was clearly intended to provide where the qualification of 30 years' residence was not met.

Invalid pension: permanent incapacity

MAMARI and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. N82/418)

Decided: 6 June 1985 by B. J. McMahon.

The AAT *set aside* a DSS decision to refuse an invalid pension to a 54-year-old former labourer who had not worked since 1975.

The AAT found that, because of a fractured wrist suffered by Mamari in 1975, he was now unable fully to use his right arm; and that this impairment, combined with his lack of work skills, very poor English and his 10 year absence from the workforce meant that he had virtually no chance of obtaining employment.

The AAT noted that it was now reviewing a DSS decision to reject invalid pension made in May 1980 and observed:

> Although . . . the reasons for the delay are understandable, it is a matter for some regret (if it be the case), that this application has not been reviewed since May 1980, in the light of the many decisions of this Tribunal that have been given since that date in relation to facts similar to the present facts. It may be the case that once an application is made to this Tribunal for review of a refusal . . . the matter takes on the status of suspended animation. If there were to be only a short interval between application and full hearing, this would no doubt be a satisfactory procedure. Where however, as in the present circumstances, there have been a number of adjournments and the delay leading up to the hearing lengthens, it should be possible to devise some mechanism for review. This is sometimes done to bring medical evidence up to date. Is it ever done to review the decision entirely in the light of other decisions of this Tribunal given in the interim?

(Reasons, p.10)

PHILLIP and SECRETARY TO DSS (No. N83/489)

Decided: 27 March 1985 by B. J. McMahon.

The AAT *set aside* a DSS decision to cancel an invalid pension held by 42-year-old former boiler-maker who had resigned from his employment at the end of 1978, suffering from chronic hypertension and depressive neurosis.

Medical evidence established that these conditions had, in the past, been aggravated by alcohol addiction; but that this condition was under control and that his psychological problems were not as acute as they had been in 1978. However, the improvement in Phillip's condition was, to some extent, due to his absence from regular employment. Consequently, the AAT said, 'any return to employment could very well bring about a deterioration in his condition'. The AAT concluded: