SOCIAL SECURITY

Number 27 October 1985

Opinion

Invalid pension reviews occupy much of the space in this issue of the *Reporter*. Although these reviews continue to explore the question of 'permanent incapacity for work' which has dominated this area of the AAT's work over the past 5 years, the range of complex issues which the reviews can present appears to be very wide. As the AAT noted in *Roesler* (p.333), many of the cases coming up for review are 'marginal cases', which require the AAT to go beyond established general principles and to explore a range of difficult questions - such as non-medical factors, rehabilitation, psychological disorders, mobility and permanence.

In *Roesler*, for example, the AAT concluded that the applicant should not be expected to move from the town where he had lived almost all of his 45 years and where the range of work was so limited that his disability prevented him from obtaining and keeping employment. The same point was made in *Reeves* (p.334), where the AAT described the applicant's capacity for work as 'merely theoretical' because of the limited employment prospects in the area where he had lived for 35 years. There was no question, the AAT said, of the applicant being obliged to move 'in the slender hope [of] finding, and holding, remunerated work.'

The Reasons in *Raketic* (p.335) contain a detailed discussion of research material on pain and its causes. The AAT used this material to support its finding that the applicant's complaints of persistent pain could be traced to serious psychological problems rather than to malingering. In the words of the Tribunal, this conclusion 'represents the triumph of scientific research over prejudice.'

In *Frendo* (p.335) the AAT returned to the question which had been raised in *Monteleone* (1984) 22 *SSR* 261 and *McDonald* (1984) 21 *SSR* 241 - could a person, who had withdrawn from the workforce before becoming disabled, be described as 'incapacitated for work'? In rejecting (in *Frendo*) the argument that only *bona fide* workers could be 'incapacitated for work', the AAT has prevented the introduction of a 'work test' for invalid pension.

In *Zironda* (p.337) the AAT rejected a DSS argument that a person's degree of blindness should be measured with the aid of corrective lenses. (The AAT also confirmed the view in *Touhane* (1984) 21 *SSR* 239, that a person was blind within s.24 of the *Social Security Act* if the person's sight was measured as less than 6/60 on the Snellen test.)

Social security residence rules are complex. *Issa* (p.331) involved a claim for family allowance during an 8 year absence from Australia; and the complexity of the rules seems to have defeated the AAT, which assumed that Australian domicile was sufficient (rather than necessary) to enable a person absent from Australia to qualify for family allowance under ss.103 and 104.

The Secretary to the DSS has a discretion under s.107(3) to treat an applicant as 'unemployed' during a period of employment. In *Waller* (p.326) the AAT applied that discretion in favour of an applicant whose employment income was very low. But this discretion was ignored by the AAT in *Vijh* (p.328), where the applicant was technically 'employed' but had been offered no work (or wages) for some 8 months. The AAT also ignored another way in which it could have provided income support for Vijh - by considering his eligibility for special benefit: see *TeVelde* (1981) 3 *SSR* 23, *Hurrell* (1984) 23 *SSR* 267.

P.H.

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The **Social Security Reporter** is published six times a year by the Legal Service Bulletin Co-operative Ltd.

Editor: Peter Hanks **Reporting:** Peter Hanks **Administration and reviews editor:** Brian Simpson
Typesetting: Jan Jay, Karen Wernas **Layout:** Peter Robinson

The **Social Security Reporter** is supplied free to all subscribers to the Legal Service Bulletin. **Separate subscriptions** are available at $15 a year (one copy), $24 a year (two copies) or $30 a year (three copies).

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