born outside Australia unless that person had her 'usual place of residence' in Australia for at least 12 months before claiming the allowance. This restriction was not to apply, according to s.96(2), where the Secretary was satisfied that the claimant was likely to remain permanently in Australia.

Date of eligibility

The AAT said that, because Elsdon had been a prohibited immigrant in 1976, she might not have been able to establish that Australia had been her 'usual place of residence' for the 12 month period required (by s.96(1)) for an applicant born outside Australia.

However, the facts as they existed in 1976 would have made it more likely than not that Elsdon would remain permanently in Australia within s.96(2), so that she could have satisfied that alternative residence qualification. Although she then had the status of a prohibited immigrant, this had largely arisen because of her carelessness and naivety and not because of any deliberate act on her part.

The AAT noted that, in 1982, a new provision, s.97(2) had been inserted in the *Social Security Act* which expressly prevented the granting of a family allowance to a prohibited immigrant. That provision had remained in force for just over one year, and was repealed in October 1983. The AAT commented that the implication was that, other than between 1982 and October 1983, 'family allowance could be paid to prohibited immigrants provided that they were otherwise qualified': Reasons, para. 13.

Accordingly, s.96(2) avoided the operation of s.96(1) and Elsdon should be regarded as qualified for family allowance in respect of her child, J, from the date of J's birth.

'Special circumstances'

The AAT then turned to the question whether payment of that allowance could be backdated to the date of Elsdon's eligibility, namely August 1976.

The Tribunal said that Elsdon had been aware of the existence of family allowance but claimed that she had been overborne by her *de facto* husband, C, who had opposed her claiming the allowance. The AAT accepted that C was at times violent and that Elsdon did many things at his insistence which she would have been better advised not to have done.

However, the AAT said that, although Elsdon had been influenced by C and he had been violent toward her, Elsdon had not acted under duress from C. The AAT described Elsdon as naive and careless in allowing C to influence her to this extent; and accepted that Elsdon had been

> in difficult and distressing personal circumstances and that her choice of living partner was undesirable. We have a great deal of sympathy for the applicant but we are of the opinion that her circumstances are not so unusual, uncommon or exceptional as to be described as 'special circumstances' in order to justify backpayment of family allowance . . . the fact that she lived in fear of being deported is in some way counteracted by the fact that it was by her own acts or omissions that she found herself in the situation she was in.

(Reasons, para. 20)

Formal decision

The AAT affirmed the decision under review.

Supplementary rent allowance

ALEXANDER & NELSON and SECRETARY TO THE DSS (Nos W85/56 & 57)

Decided: 30 July 1985 by J. R. Dwyer.

Paul Alexander and Michael Nelson were invalid pensioners living at Broome in Western Australia. They had been granted supplementary rent assistance by the DSS but, in January 1985, when the DSS learned that they were living in a tent on Crown land, the DSS cancelled payment of that assistance. Each of them applied to the AAT for review of that decision.

The legislation

Section 30A of the *Social Security Act* provides that a pensioner who pays or is liable to pay rent of more than $10 a week is qualified to receive a supplementary rent allowance.

Section 6(1) defines 'rent' to mean rent paid for premises or part of premises occupied by the person as the person's home.

The evidence

Nelson told the AAT that he and Alexander shared a 2-man tent which was owned by an organization called Kingdom Management. Although this organization was also known as Kingdom Management Pty Ltd, it was not a company nor was it registered as an association or a charitable foundation under any legislation. In fact, it appeared that Kingdom Management was a name used by Nelson to cover certain religious activities (or, at least, activities which Nelson described as religious).

It appeared that Alexander had signed a document transferring all 'my social security income to the religion of Kingdom Management' in return for being allowed to share occupancy of the 2-man tent.

In this application for review, Nelson argued that to deny a supplementary rent allowance to him and to Alexander was to interfere with his 'free exercise of . . . religion' contrary to s.116 of the *Commonwealth Constitution* and contrary to the *Human Rights Commission Act* 1981 (Cth).

The decision

The AAT concluded that, as Nelson was the owner of Kingdom Management, any payments of rent made by him were payments made to himself. Accordingly he could not qualify for supplementary rent assistance.

So far as Alexander was concerned, the AAT said that there was no evidence that he had paid 'rent'. Rather, he had purported to assign the whole of his social security income to Kingdom Management. (It might be, the AAT said, that this assignment was illegal under s.144 of the *Social Security Act* which provides that a pension 'shall be absolutely inalienable'; that Nelson, as owner of Kingdom Management, held those funds in trust for Alexander; and that, accordingly, Alexander was in a similar position to Nelson—if paying 'rent', he was paying it to a partnership of which he was one of the partners.)

The AAT then raised a final point which would prevent Alexander from qualifying:

> 2. Furthermore the 'premises' or 'part of premises' occupied by Mr Alexander are half a 2-man tent with no cooking, washing or toilet facilities. It is on land owned or leased by the Kingdom Management Community. If there were a separate payment of $30 per week for these 'premises' there would be a real question as to whether that was not so inappropriate a figure as to show that it was not a genuine payment of 'rent'.

Formal decision

The AAT affirmed the decision under review.

Handicapped child's allowance: rate of allowance

LANG and SECRETARY TO DSS (No. V84/391)

Decided: 24 July 1985 by I. R. Thompson.

Annette Lang was granted a handicapped child's allowance for her daughter, K, in 1981 on the basis that the child was a handicapped child.

The DSS decided that the allowance should be paid at the rate of $20 a month, and later increased that rate to $30 a month. Lang asked the AAT to review that decision.

The legislation

Section 105L(b) of the *Social Security Act* gives the Secretary to the DSS a discretion as to the rate of handicapped child's allowance payable in respect of a 'handicapped child' (so long as the rate does not exceed $85 a month). On the other hand, s.105L(a) provides that the rate of allowance payable in respect of a 'severely handicapped child' is $85 a month.

Costs incurred

The Tribunal attempted to establish the costs incurred by Lang in caring for her child but observed that Lang was extremely vague about those costs. The DSS acknowledged that Lang's financial circumstances were very poor and said that it was willing to cover the costs incurred by her. Lang claimed that her child needed ex-