Reserve.

SOCIAL SECURITY

Number 28 December 1985

Opinion

The High Court's decision in *Harris* (1985) 24 *SSR* 294 left open several questions arising from the pension income test: by suggesting a flexible approach to identifying 'annual rate of income', the Court ensured a steady stream of appeals in this area. In the current issue, two cases, *Ruggeri* (p.345) and *Blanusa* (p.346) discuss the selection of the period over which fluctuating income should be averaged. The two decisions adopt quite different periods (an irony, given their calls for 'consistency in administration'); and the evidence as to DSS practice presented in *Blanusa* throws considerable doubt on the claim made by the DSS in *Ruggeri* - a claim which proved decisive in the latter case.

We have, from time to time, speculated on the broad impact which social security appeal decisions have on the administration of the DSS. We know that, after 3 years of AAT criticism of DSS refusal to pay special benefits to migrants covered by 'assurances of support' (or 'migrant guarantees' as they were called), the DSS eventually changed its practices to conform to the AAT's approach: see (1984) 20 *SSR* 228 and *Bahunek* (1985) 24 *SSR* 287. On the other hand, the DSS does not appear to have adopted the flexible approach to benefits for full-time students put forward by the AAT in *Martens* (1984) 22 *SSR* 248 and *Spooner* (1985) 26 *SSR* 320.

Nor has the AAT had any impact on those people who are responsible for policy decisions involving changes to the *Social Security Act*. In this issue of the *Reporter*, the AAT has again called for amendment of the backdating provisions for handicapped child's allowance, which the Tribunal described as 'patently inadequate and inappropriate': *Roessel* (p.344). The AAT was echoing criticisms raised in such earlier decisions as *Damalas* (1984) 19 *SSR* 195 and *Beadle* (1984) 20 *SSR* 210.

By way of contrast to this indifference to AAT decisions and comments, the DSS and the Government have recently moved to change the *Social Security Act* so as to *overcome* a long series of Tribunal and Federal Court decisions. Rewritten versions of s.140(1) and (2), designed to reduce the chances of AAT review of overpayment recovery decisions, came into operation from 1 November 1985: these changes are examined at p.354 of this issue.

The AAT has adopted an ambiguous approach to the power in s.145 of the *Social Security Act* - the Secretary's discretion to treat a claim for one pension, benefit etc. as a claim for a more appropriate pension, benefit etc. so as to permit backdating of the latter pension, benefit etc. This power was used in *Whitehead* (1985) 24 *SSR* 285 and *Hurrell* (1984) 23 *SSR* 266. But other decisions, such as *Giurgis* (p.351 of this issue) have raised substantial doubts as to whether the AAT can use this power. On p.355, Brian Simpson looks at the issues involved in the AAT's use of s.135TB(5) - the replacement of s.145; he suggests that the Tribunal's occasional refusal to exercise the power demonstrates a failure to understand the full range of its powers under the *AAT Act*.

P.H.

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