she moved to Melbourne where she lived in a boarding house, managed by S. In October 1983, Chapman and S. advised the DSS that they intended to marry and confirmed that advice in February 1984.

In January 1985, Chapman and S, Chapman's 2 children and S's son moved out of the boarding house into a jointly rented house and the DSS then cancelled Chapman's pension.

In support of her application for review, Chapman and S told the AAT that they had become engaged to marry in mid-1984 but had broken off their engagement by the time that they moved into the jointly rented house in January 1985. They also told the AAT that they had occupied separate rooms in that house, taking individual responsibility for their washing, cooking, cleaning and shopping and had each part half of the household bills.

However, notes taken by the chairman of the SSAT during an appeal before that Tribunal in February 1985 indicated that their engagement had not been broken off at that time and that their domestic arrangements had been more consistent with a shared life style.

Chapman and S agreed that, to the outside observer, they had the appearance of a family unit and said that Chapman's children treated S as their father. Chapman also told the AAT that she and S had a continuing sexual relationship; but that her reason for living with S was primarily financial. On the other hand, S said that they continued to live together because there was still a very close friendship between them and because Chapman's children had come to depend on him.

On the basis of this evidence, the AAT concluded that Chapman and S and their respective children were living as a family unit, in which Chapman and S lived as man and wife on a *bona fide* domestic basis although not legally married. The AAT referred to the general difficulty of deciding whether unmarried people were living as man and wife:

> 'It is our view that the changing of community attitudes to the sharing of accommodation by persons of different sexes and the growing variety of household structures both within and outside formal marriages have led to the words of the Act now being most difficult to apply.

> We do not pretend to see a solution to the problem but we feel that it requires further consideration by policy makers.'

(Reasons, para.47)

The AAT indicated that an important reason why it had concluded against Chapman was its substantial doubts as to her credibility. There were conflicts and inconsistencies between the evidence given by Chapman and S and between their evidence and the notes taken at the SSAT hearing.

Handicapped child's allowance: eligibility

DAWSON and SECRETARY TO DSS (No.W85/53)
Decided: 14 February 1986 by H.E. Hallowes.

Dawson asked the AAT to review a DSS refusal to pay her handicapped child's allowance for her son, R, who was 15.

R suffered from recurrent ear infections, enuresis, hearing difficulty and some school attendance problems. Dawson said she had to get up to R every night, change his bed, comfort him when his ears ached, and give him extra assistance with schoolwork. Extra costs incurred include washing costs, replacement of bed linen, cost of ear drops plus petrol for regular attendance at hospital.

The legislation

The AAT concentrated on the question whether Dawson could qualify under s.105JA, which provided (at the relevant time) that the Secretary could grant a handicapped child's allowance to a person who had the custody, care and control of a 'handicapped child', if the Secretary was satisfied that the person provided care and attention only marginally less than constant, and that the person was suffering severe financial hardship.

According to s.105H(1), a 'handicapped child' is a child with a physical or mental disability requiring care and attention only marginally less than constant.

Section 105L gives the Secretary a discretion to determine the rate of allowance to be paid for a 'handicapped child', but not exceeding $85 a month.

'Constant care and attention'

The AAT adopted the explanation of the phrase 'constant care and attention' from *Youssef* (1981) 5 *SSR* 55: 'if the need for care and attention is continually recurring the statutory requirement is satisfied'.

The AAT noted that, although R had recurrent ear infections, he was old enough to tell his mother when these occurred and she did not have to be continually watchful, except for supervising his swimming: this care and attention was not continually recurrent.

The AAT said that extra time spent with R on his homework was not as a result of a physical or mental disability, but arose out of his dislike of school. On the other hand, his bed-wetting did constitute a physical or mental disability, and the care and attention needed because of this, together with the ear infections, indicated that he was a child who required care and attention only marginally less than the care and attention that he would need if he were a severely handicapped child; and that need was likely to continue for an extended period.

Severe financial hardship?

During the relevant period, Dawson's *de facto* spouse was either on unemployment benefit, or on a basic income from labouring work. The AAT examined the DSS guidelines on financial hardship, and the AAT decision in *Nannup* (1985) 28 *SSR* 342, which considered these inappropriate where the family was large (there were 6 dependent children in Dawson's household), and the extra costs involved in the care of Robert. The AAT the concluded that Dawson was subject to severe financial hardship.

Formal decision

The Tribunal set aside the decision under review, and directed that Dawson be granted handicapped child's allowance pursuant to s.105JA, at a rate to be determined by the Secretary.

Family allowance: late claim

OZCAGLI and SECRETARY TO DSS (No.V84/425)
Decided: 16 December 1985 by H.E. Hallowes

Melek Ozcagli appealed against decisions of the DSS to refuse to allow backpayment of family allowance for 2 of her children.

Ozcagli applied for student family allowance for her 18-year-old son, H, in February 1983 and payment commenced in March 1983. In September 1983, Ozcagli applied for family allowance for her daughter, M, born in September 1982. Payment commenced in September 1983. Ozcagli requested payment for H from November 1980, when he turned 16, and payment for M from September 1982, when she had been born.

The evidence

Ozcagli had arrived in Australia in 1970 with 2 children. Two others were born in Australia. She had limited under-