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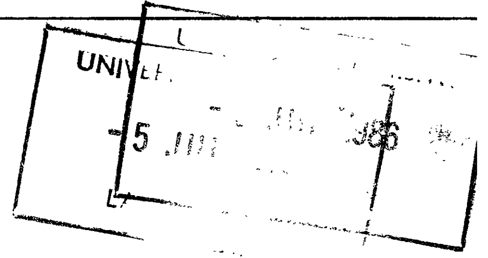

SOCIAL SECURITY Reporter

Number 31 June 1986

Opinion

AAT decisions continue to present contrasts. As we observed in the last *Reporter* (see p.370), conflicting approaches have been adopted to married pensioner couples obliged to live apart because of illness. The decision in *Trail* (1986) 30 *SSR* 377 ignored the husband's income when calculating the wife's entitlement, while the decision in *Fague* (p.392 of this issue) held that the couple's joint income had to be taken into account.

The decisions in *Mathews* (p.395) and *Eleftheriadis* (p.396) take different approaches to unemployment benefits for tertiary students. In the first case, a research student was held not qualified for benefit because his university expected that he engage in full-time study. In the second case, the AAT granted benefit to a research student because he was not fully committed to his studies. (This type of problem will, presumably, arise much less often once the *Social Security Legislation Amendment Bill* 1986 is passed - see p.398.)

An even sharper contrast is provided by *Priftis* (p.391) and *Donovan* (p.391). In *Priftis*, the AAT decided that a mother, stranded in Greece because of estrangement from her husband (who held her children's passports) could not qualify for family allowance for her children, although they were in her custody. In the second case, the AAT decided that a father (living in Australia) was entitled to family allowance for his child, who was living with her mother in Papua New Guinea - although the father was, for much of the time, in prison. (Patriarchy rules, O.K.?)

These contrasts make a nonsense (if that is not a tautology) of the recent 'analysis' of the AAT's work in the other *Bulletin*. According to Richard Farmer, the AAT was responsible for adding '$1 billion a year' to Australia's welfare bill; and *Kingston* (1985) 28 *SSR* 350 (where the AAT found that 2 people were not cohabiting) 'could add another $300 million plus'. Farmer did not refer to the scores of cohabitation cases which went the other way (4 in the same issue of the *Reporter* as *Kingston*). Nor did he discuss the question whether AAT decisions have any impact beyond the immediate case, or the power which the DSS has to see that the legislation is changed - questions which we discussed in (1985) 28 *SSR* 341.

Farmer went on to assert that the decision in *Kennison* (1985) 29 *SSR* 362 (where an unemployment beneficiary was awarded extra benefit for his 16-year-old *de facto* spouse) showed that 'a person's word . . . is all that's necessary to claim the higher married benefit'.

The *Bulletin* article should not be dismissed too lightly. Welfare rights could provide an easy scape-goat for a government taking a 'tough' line on public spending. Farmer's article quotes Finance Minister Walsh, who has criticized courts and tribunals which 'overturn longstanding applications of the law, thereby causing large increases in outlays'.

Even if this attack could be supported by evidence of fiscal impact, would it not demonstrate that the welfare rights of Australians have been denied for years and are only now being given the recognition that taxation rights have always received?

P.H.

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The **Social Security Reporter** is published six times a year by the Legal Service Bulletin Co-operative Ltd. ISSN 0817 3524

Editor: Peter Hanks **Reporting:** Peter Hanks, Jenny Morgan **Administration and reviews editor:** Brian Simpson
Typesetting: Jan Jay, Laserset **Layout:** Peter Robinson

The **Social Security Reporter** is supplied free to all subscribers to the Legal Service Bulletin. **Separate subscriptions** are available at $20 a year (one copy), $35 a year (two copies) or $45 a year (three copies).

Please address **all correspondence** to Legal Service Bulletin, C/- Law Faculty, Monash University, Clayton 3168.
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