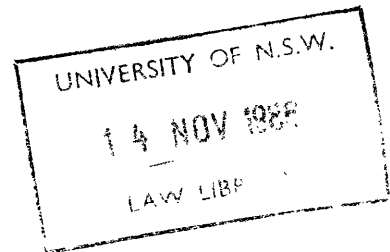


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# SOCIAL SECURITY



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## Opinion

In *Bojczuk* (noted on p.417 of this issue of the *Reporter*) the AAT discussed the question of recovery by the DSS of a disputed overpayment while an appeal was pending. (In that case the DSS had suspended recovery while the SSAT was dealing with the matter but had then resumed recovery action, despite the fact that an appeal was pending to the AAT.)

The AAT offered a strong (although implied) criticism of the DSS's recovery action while the appeal was pending: 'We trust', the AAT said, 'that it will not be necessary in future for every applicant to this Tribunal who seeks recovery of a decision to recover overpayment under s.140(2) to apply formally for a stay of deductions pending review.'

However, a recent change in DSS procedures appears to fly in the face of this criticism. As part of the development of a 'National Overpayments Action Plan', the DSS has revised its overpayments procedures. According to para.22.230 of the USB manual (as issued in September 1986) -

'where a beneficiary has lodged an appeal against an overpayment any recovery action should continue or, where proposed, should be implemented.'

This new procedure, which applies to recovery of all overpayments whether of benefit, pension or allowance, is likely to cause substantial problems for the appeal system: members of the SSATs could see the new procedures as further evidence of the low status which the DSS accords to its own appeals system. Other evidence of the subordinate position of the

SSATs can be found in their lack of independence and in the increasing tendency (over the past few months) of the DSS to veto SSAT decisions (a question which the *Reporter* will explore in its next issue).

So far as the AAT is concerned, its independence from the DSS is guaranteed by the *AAT Act 1975*; and, in so far as these new instructions run against the spirit of that independence, that Tribunal does have the power (as it noted in *Bojczuk*) to order the DSS to suspend recovery of overpayments while an appeal to the AAT is pending. But why, one might ask, should it be necessary for an applicant to the AAT to ask for such an order?

DSS guidelines were considered by the AAT in a number of other decisions noted in this issue of the *Reporter*. In *Boord and Doyle* (p.414), the Tribunal endorsed the assets test guidelines, which declare that a person with cash reserves of \$6000 (or \$10 000 for a married couple) cannot be regarded as suffering 'severe financial hardship'; although the AAT stressed the need to apply the guidelines 'with flexibility' and to take account of any unusual circumstances.

In *Miller* (p.422), the Tribunal criticized the rather crude guidelines used by the DSS to decide whether an applicant for a 'special need' pension was 'in special need of financial assistance'. (This pension is payable to a person who left Australia before the introduction of pension portability in 1973.) The AAT was particularly critical of the rigidity of the guidelines and their inconsistency with the income and assets test for Australian-resident pensioners.

## In this issue

<b>Opinion</b>	... 413
AAT decisions	
• Assets test: financial hardship	
<i>(Boord, Doyle)</i> ...	414
<i>(Davey)</i> ...	415
• Recovery of overpayment	
<i>(Atkinson)</i> ...	415
<i>(Plumstead, Sdrolias)</i> ...	416
<i>(Bojczuk)</i> ...	417
<i>(Raven)</i> ...	418
• Sickness benefit: back-payment	
<i>(Baadts)</i> ...	418
• Income test: annual rate of income	
<i>(Slavik-Behar)</i> ...	419
<i>(Dunning)</i> ...	420
• Income test: 'capital' or 'income'?	
<i>(Read)</i> ...	420
• Invalid pension: payable in prison?	
<i>(Hatzipashalis)</i> ...	421
• Special need pension	
<i>(Miller, Teoharevski)</i> ...	422
• Invalid pension: 'permanently blind'	
<i>(Cowley)</i> ...	423
• Invalid pension: incapacity for work	
<i>(Donkers)</i> ...	424
• Unemployment benefit: work test	
<i>(Chapman, Thomas)</i> ...	424
<i>(Donaghey)</i> ...	425
• Remote area allowance	
<i>(Taylor)</i> ...	426
• Income test: 'derived' or 'received'?	
<i>(Sharp)</i> ...	426
• Sickness benefit: recovery	
<i>(Khabbaz)</i> ...	426
• Handicapped child's allowance	
<i>(Morgan)</i> ...	427
<b>Legislation</b>	
• Reciprocal agreement with Italy	... 428