

The AAT noted that payments of compensation under ss.69 and 70 of the *Workers' Compensation Act 1971* (SA) were not payments of compensation for incapacity arising from an injury. Rather, those sections provided for the payment of compensation for physical disabilities - according to a table of injuries in s.69 and according to a process of adapting that table in s.70.

The AAT referred to its earlier decision in *Siviero* (1985) 28 SSR 348, where it had held that compensation paid to a person under s.70 of the

Workers' Compensation Act 1971 (SA) could not be regarded as including any component covering the incapacity for which the person received sickness benefit, as sickness benefit was paid, not for injury or for disability, but for 'incapacity for work'.

The AAT said that the same rule applied to s.69 of the *Workers' Compensation Act 1971* (SA). Moreover, the AAT said, a careful examination of Khabbaz's case and the compensation settlement did not reveal that he and his employer had settled the case under ss.69 and 70 so as to avoid the

impact of s.115B(1) of the *Social Security Act*.

Accordingly, none of the compensation payment made to Khabbaz could be regarded as compensation in respect of the incapacity for which he was receiving sickness benefit and the DSS was not entitled to reduce the amount of his sickness benefit.

Formal decision

The AAT set aside the decision to reduce the weekly payments of Khabbaz's sickness benefit.

Handicapped child's allowance

MORGAN and SECRETARY TO DSS (No. W85/179)

Decided: 27 June 1986 by J.O. Ballard. Shirley Morgan had applied for a handicapped child's allowance in respect of her son, C, in 1982, when he was 12 years of age.

The claim, which was made on the basis that C was suffering from mental retardation and from hydrocephalus, was rejected by the DSS and Morgan asked the AAT to review that decision.

Morgan failed to attend the hearing of her application for review in June 1985 and the AAT dismissed her application without proceeding to review the decision. However, the AAT later learned that Morgan's failure to attend the June hearing had been due to the fact that she had moved interstate and, in October 1985, the AAT purported to set aside the dismissal order.

Jurisdiction

When Morgan's application for review came on for hearing again in April 1986, the AAT indicated that the earlier dismissal had disposed of the original application for review and that it had no jurisdiction to proceed.

Morgan then applied to the AAT for an order extending the time for lodging a new application for review and, when the AAT immediately extended that time, Morgan lodged a fresh application for review.

Access to DSS files

Morgan told the AAT that C had been granted an invalid pension in February 1986 and asked that she be given access to C's invalid pension file in order to establish her eligibility for handicapped child's allowance during the period from 1982 to 1986.

Although the DSS suggested that the simplest procedure for obtaining that access was under the *Freedom of Information Act*, Morgan was unable to use those procedures because C had left home and was not available to sign an authority to the DSS to release his file to Morgan.

The AAT then issued a summons, requiring the DSS to produce to the AAT C's invalid pension file. The DSS produced that file to the AAT but

asked for an order under s.35 of the *AAT Act 1975* to prevent the contents of the file being disclosed to Morgan and to her legal advisers. This application was based on s.17 of the *Social Security Act*, which prevents a DSS officer from disclosing information relating to the affairs of another person and protects an officer against being required to produce information, acquired by the officer in the performance of her or his duties, to a court.

The AAT held that s.17 of the *Social Security Act* did not affect the question of disclosure to the AAT, which was not a court and which was exercising its review functions. However, the AAT decided that it was appropriate, because of the concerns of the DSS about C's privacy, to restrict access to C's invalid pension file to officers of the AAT and to Morgan's legal adviser.

Eligibility for handicapped child's allowance

C's invalid pension file showed that he had been granted the invalid pension from February 1986 on the basis that he was permanently blind. It also appeared that C had suffered from very poor vision since the age of 3; that, as a consequence of this disability, he had required assistance from his mother and stepfather; and that, because of his other disabilities, he had required close supervision.

The Tribunal said that, in the absence of convincing evidence to the contrary, the fact that C was eligible for an invalid pension in February 1986 established that he had suffered from a sufficient disability so as to be treated as a 'handicapped child', as defined in s.105H of the *Social Security Act*, prior to that date.

Although the original application for handicapped child's allowance had not been based on C's visual disability, the AAT was not prevented from taking that disability into account in deciding whether C had been a handicapped child before February 1986: it was the function of the Tribunal to reach the correct decision on the evidence presented before it, rather than

to determine whether the decision under review was correct on the evidence available at the time of that decision, the AAT said.

After reviewing the evidence, the AAT decided that C had required care and attention because of his disabilities, only marginally less than constant care and attention, during the period from September 1982 until February 1986; and that, because of the provision of that care and attention, Morgan had suffered severe financial hardship. It followed that, during the period in question, Morgan had been qualified to receive a handicapped child's allowance under s.105JA of the *Social Security Act*.

Formal decision

The AAT set aside the decision under review and remitted the matter to the Secretary with a direction that Morgan was entitled to handicapped child's allowance for her son, C, from September 1982.