

SOCIAL SECURITY

Number 36 April 1987

Opinion

Of matters categorical . . .

The categorical system of social security which exists in Australia arguably often leads to if not absurd, at least disturbing results.

In *del Rosario* (p.460) the AAT had to contend with an applicant who had been in receipt of sickness benefit with an additional payment for his dependent spouse. While his wife was overseas caring for a sick relative he was granted invalid pension. His wife was unable to claim wife's pension because she was not present in Australia as required by the Act and so did not receive that pension until her return.

The Tribunal commented that the problem in the case arose from the different schemes of payment in the *Social Security Act*. In the June 1986 *Reporter*, Elizabeth Marshall argued the case for the merger of sickness benefit and invalid pension into a single 'unfit to work' entitlement. Certainly such a scheme would not have left Mr and Mrs *del Rosario* with a lower income as a result of 'upgrading' to the pension.

Finally, the AAT concluded in *del Rosario* that sickness benefit and invalid pension are 'mutually exclusive'. While that view is no doubt correct in terms of the legislative requirements for each payment, the discussion of *Mohreb* in the last issue of the *Reporter* illustrates that the appropriateness of either payment often has more to do with fine judgments than clear definitions.

. . . and needs geographical

In *Ho* (p.454) the AAT decided that the applicant though living in Australia still had the 'custody, care and control' of his children living in Vietnam. This may be contrasted with *Phan* (p.454) where the applicant in Australia did not retain such control of his children in Vietnam.

In the former case the AAT delved at length into the cultural background of the applicant in order to ascertain the role which he would be expected to play in the family. The conclusion was that by indicating his instructions in writing to his wife in Vietnam and those instructions being accepted by her, he was performing the same function as he would if living with his family.

In the latter case, the analysis was different. Being physically removed compelled the conclusion that the applicant was unable to exert any effective control on his family. He had after all no way of knowing whether any written instructions he gave would be carried out and no means of enforcing them.

The two cases illustrate the clash of cultures. Perhaps in some communities a high degree of control may be retained by a parent who is communicating directions by post because of the social hierarchies accepted in that community. Indeed, the degree of control retained by an absent parent may in fact be increased when the absence is created against the wishes of the family.

B.S.

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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: Brian Simpson Reporting: 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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