

# SOCIAL SECURITY

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## Opinion

Definitional issues feature in this issue of the *Reporter*. In *Williams* the AAT determined that a medical condition was either 'temporary', in which case it qualified the person for sickness benefit, or 'permanent', where the person became eligible for invalid pension. There was no halfway house of 'indefinite' conditions under this scheme. Indeed, an indefinite medical condition was more properly described as a permanent condition.

In *Mahfouz* the applicant was claiming family allowance for a period spent overseas. The AAT had to decide whether the absence of the applicant and his family from Australia was 'temporary' or 'permanent'. The Tribunal referred to the Federal Court decision in *Hafza* where it was noted that a temporary absence could become an indefinite although not a permanent absence. Although arguably a sensible conclusion was reached in *Mahfouz* the inconsistency in the reasoning when contrasted with the meaning given to 'permanent' in *Williams* is apparent. The legalistic response that they are concerned with different issues bears little credence. Rather, this illustrates the problem with eligibility criteria that rely upon strict notions such as 'permanent' or 'temporary'.

In *Read* the Federal Court decided that the definition of 'income' in s.6(1) of the *Social Security Act* included 'capital'. The distinction

between income and capital receipts which exists in income tax law was not part of the definition in that section. This was followed in *Zolotenki* where a war restitution payment was regarded as income for the purposes of the Act. A similar decision was reached in *Kelleners*.

In *Nemaz* the AAT decided that an Italian social security pension was 'income' under the *Social Security Act*. That pension was from a contributory fund although the payments related to the person's wages rather than their contributions. In *Evans* a United Kingdom war disability pension which was designed to compensate the recipient for interference with normal living was regarded as 'income', following the Federal Court decision in *Read*.

The arbitrary nature of the DSS guideline which assumes a 2.5% annual rate of income from property for the purposes of the assets test received some criticism from the AAT in *Cahoon* and *Allman*. In the latter decision the Tribunal referred to Farm Survey Reports produced by the Bureau of Agricultural Economics which indicated anything but a 2.5% return in certain areas of farming activity. Given the comments in that decision one wonders whether the 2.5% guideline should be replaced by more flexible and relevant criteria.

B.S.

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