

'within such longer period as the Secretary allows' where there were 'special circumstances'.

The discretion to pay arrears

The AAT pointed out that, in a number of AAT and Federal Court decisions, (see *Beadle* (1985) 26 SSR 321), it had been held that 'mere ignorance of the existence of the allowance is not *per se* a "special circumstance" although particular facts may render it so, as for example, illiteracy, isolation, or misinformation'. And, 'the more lengthy the period of arrears in question, the more weighty must be the facts established in order to find a claim for "special circumstances": Reasons, para.23.

Weeding argued that special circumstances arose from her ignorance of the allowance due to isolation; the rarity of Mark's handicap; unusual expenses incurred and salary foregone as a result of Mark's handicap; and resulting emotional effects and stress.

Considering each of these in turn, the AAT reiterated that mere ignorance of the existence of handicapped child's allowance did not justify arrears. Nor did the Tribunal consider isolation significant as Weeding had attended specialist doctors in Adelaide and Melbourne. The AAT conceded the rarity of Mark's condition but did not consider that there had been any financial hardship demonstrated. Finally, on the issue of stress and emotional effect the Tribunal held that Weeding 'has not allowed these to deter her . . . and . . . has courageously overcome many of those difficulties and provided correct care and attention when possibly other women in such a situation may not have been able to do so': Reasons, para.33.

After considering a number of previous decisions on the discretion to backdate handicapped child's allowance claims, and relying in particular on the Federal Court's decision in *Beadle* (above), the AAT held

'that the applicant's circumstances do not demonstrate "special circumstances" as that phrase has been interpreted and applied [in other decisions] sufficient to justify the exercise of the discretion to pay the applicant the allowance in respect of Mark, for a period in arrears of some seven and a half years.'

(Reasons, para 35).

Formal decision

The AAT affirmed the decision under review.

[R.G.]

Time limit for appeal

ROBERTSON and SECRETARY TO DSS

(No. S87/256)

Decided: 23 September 1988 by

R.A. Layton.

In early 1986, Alicia Robertson applied to the DSS for supporting parent's benefit. The DSS rejected her claim on 22 May 1986.

In May 1987, Robertson lodged a second claim for supporting parent's benefit, which claim was then granted with effect from 28 May 1987.

On 9 June 1987, Robertson made an appeal to the Secretary, under the former s.16 of the *Social Security Act*, against the officer's decision of 22 May 1986. This appeal was reviewed by a SSAT, which recommended that the appeal be upheld. However, on 15 September 1987, the Secretary dismissed Robertson's appeal. She then applied to the AAT for review of the Secretary's decision. The AAT arranged for a preliminary hearing on the point whether, even if Robertson's appeal succeeded, there would be any substantial benefit to her, given her long delay in lodging the appeal.

The legislation

Section 168(4) of the *Social Security Act* imposes an effective 3-month time limit for appeals to the Secretary against decisions of officers of the DSS. The provision limits the effect of any decision of the Secretary, when exercising the appeal powers in s.16. The Secretary's decision can only take effect from the date of the decision which is under appeal if the appeal is made to the Secretary within 3 months of the decision under appeal. If there is a longer delay, the Secretary's decision can only take effect from the date of the Secretary's decision - it cannot be retrospective.

This effective time limit was introduced, with effect from 1 July 1987, by the *Social Security and Veterans' Entitlements Amendment Act 1987*, s.3(11) of which provided that the effective time limit would only apply in relation to appeals to the Secretary made on or after 14 May 1987.

No effective relief for applicant

The AAT noted that s.3(11) of the *Social Security and Veterans' Entitlements Amendment Act 1987* preserved the position of a person who had appealed to the Secretary under the

former s.16 of the *Social Security Act* before 14 May 1987: such a person would not be affected by the 3-month time limit on appeals.

However, in the present case, Robertson had made her appeal to the Secretary after 14 May 1987. She was therefore affected by the 3-month time limit. The effect of that time limit was that any favourable decision of the Secretary, when dealing with the appeal against the DSS officer's decision, could only take effect from the date on which Robertson had lodged her appeal to the Secretary (9 June 1987) and not from the date of the officer's decision (22 May 1986).

The AAT noted that, when exercising its social security review jurisdiction, the AAT was reviewing the Secretary's appeal decision; and that the AAT's powers were limited to the powers and discretions of the Secretary (s.43(1), *AAT Act*). Accordingly, in the present matter, even if the AAT made a favourable decision on the merits of Robertson's original claim for supporting parent's benefit, the AAT's decision could only take effect from the date when Robertson had appealed to the Secretary (9 June 1987). By that date, the AAT pointed out, Robertson was already receiving the supporting parent's benefit granted to her from 28 May 1987.

It followed, the AAT said, that if the present matter were to proceed to a hearing on the merits, there was no effective relief which the Tribunal could grant to Robertson.

Interim decision

The AAT decided that the relevant date from which any decision it might make could take effect was 9 June 1987 and that there was no relief which could be granted to Robertson if the matter proceeded to hearing on the merits.

[P.H.]