

Administrative Appeals Tribunal decisions

Carer's pension: constant care

KEDWELL and SECRETARY TO DSS
(No. N87/239)

Decided: 11 September 1987 by
A.P. Renouf.

James Kedwell's wife was granted an invalid pension in 1986, on the basis that she was permanently incapacitated for work because of disc ruptures and degeneration in her lumbar spine. Kedwell then applied for a carer's pension.

When that application was rejected by the DSS, Kedwell asked the AAT to review the rejection.

The legislation

At the time of the decision under review, s.33 of the *Social Security Act* provided that a carer's pension was payable to a person who personally provided 'constant care and attention for a relative of the person in a home of the person and of the relative'.

'Constant care and attention'

Kedwell's wife could perform light household tasks but not most of the tasks normally regarded as housework. At least once a month she was bedridden for 4-7 days. By the time of the AAT hearing, the frequency of these crises had increased to twice a month.

Kedwell told the AAT that, as a result of his wife's disability, he was obliged constantly to oversee her and that he performed most of the housework.

The AAT noted that the term, 'constant care and attention', was also used in the context of handicapped child's allowance. In that context, the phrase had been read as referring to constantly recurring, rather than unremitting, care and attention.

However, the meaning which had been given to the phrase for the purpose of handicapped child's allowance should not be adopted for the purpose of carer's pension. As

noted in *Seager* (1984) 21 SSR 230, handicapped child's allowance was 'no more than a moderately small income supplement'; whereas carer's pension was paid at the standard pension rate.

The AAT also referred to a 1986 Tribunal decision in *Re James and the Commonwealth*, where the phrase 'constant help and attendance' in the *Compensation (Commonwealth Government Employees) Act 1971* was said to require 'significant assistance every day'.

The AAT said that, despite the fact that Kedwell's wife had severe handicap, she could not be said to require significant care and attention every day nor did Kedwell provide such care and attention. That care and attention was only provided during the times when Kedwell's wife was bedridden.

Formal decision

The AAT affirmed the decision under review.

Invalid pension: incapacity for work

STANKO and SECRETARY TO DSS
(No. Q87/12)

Decided: 28 July, 1987 by J.B.K. Williams

The AAT affirmed a DSS decision to refuse invalid pension to a 22-year old male who claimed that he had suffered a 'nervous breakdown.'

The applicant had engaged in little work since leaving school. The medical evidence suggested that he had no serious psychiatric disorder but did lack maturity. The medical opinions also supported the view that the granting of invalid pension may be counterproductive to the applicant by preventing him from developing independent and mature attitudes.

The Tribunal accepted this view of the applicant. It was also noted that his condition was probably not permanent. It had been put to the Tribunal that professional counselling may improve his condition within 12 months.

KYRIAKOS and SECRETARY TO DSS

(No. V86/701)

Decided: 6 August 1987 by H.E. Hallowes, G.F. Brewer and D.M. Sutherland

The AAT set aside a DSS decision to refuse invalid pension to a 50 year old former factory worker. The applicant had suffered from a heart infection since 1981. The medical evidence supplied by the applicant's doctor

suggested that the applicant's illness was psychosomatic, although there were real physical ailments.

The Tribunal found that the applicant was eligible for invalid pension.

'We accept the evidence of his treating doctor and we are satisfied that Mr. Kyriakos is not exaggerating his symptoms and that he is a genuine person who attempted to continue working for 12 months after developing symptoms. His neurosis is not a treatable psychiatric illness or disease.'

(Reasons, para. 10)

His physical and mental condition, said the AAT, would prevent him gaining employment in the area for which he was qualified.

BARNES and SECRETARY TO DSS
(No. S86/259)

Decided: 23 September 1987 by J.A. Kiosoglous, J.T.B. Linn and D.B. Williams.

Malcolm Barnes asked the AAT to review a DSS decision to reject his claim for invalid pension.

The evidence

Barnes, who was aged 42, had completed less than 2 years of secondary schooling and had no trade qualifications. He had worked as a cabinet and coffin maker, and had worked on his own account as furniture restorer.

Barnes claimed that he experienced severe pain in his spine, hip and

thighs, which was worse when he walked or attempted physical movement.

Medical evidence established that there was no physical basis for this pain; although the doctors agreed that Barnes believed that the pain had a physical basis. Barnes had consulted many doctors, and rejected their opinions that his pain might have a psychological rather than a physical cause.

A psychiatrist said that Barnes was suffering from hypochondriasis - a neurosis in which he unrealistically interpreted physical signs or sensations as abnormal, leading to preoccupation with the fear or belief of having a serious disease.

According to the *Diagnosis and Statistical Manual of Mental Disorders*, 'The unrealistic fear or belief of having a disease persists despite medical reassurance and causes impairment in social or occupational functioning.'

The psychiatrist said that Barnes displayed the classic symptoms of hypochondriasis and was 85% incapacitated for work. Treatment was unlikely to be successful because Barnes believed that he had a physical, not a psychological, disability; so that the condition was likely to be permanent.

A second psychiatrist, consulted by the DSS, said that Barnes was not suffering from any psychiatric disorder but had personality difficulties, evidenced by preoccupation with obtaining an invalid pension and anger towards the medical profession.