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SOCIAL SECURITY Reporter

Opinion

Negative social policy?

The AAT's decision in *Christie* (p.560) suggests a poor fit between income suppport and other welfare policies in Australia. The discretion to pay special benefit, the Tirbunal said, should not be exercised in favour of a woman caring for several foster children - a woman who had been encouraged to undertake that foster care by advice from the DSS that she would be paid either supporting parent's benefit or special benefit. What sensible social or economic objective, one might ask, is served by denying support to a woman who is undertaking the foster care of children? Whose interests are served by denying those children the opportunity to live in the community, rather than in an institution? And where does the responsibility for this dysfunctional result lie: with the inflexible drafting of the *Social Security Act*; or with the unimaginative approach of the Tribunal?

In *Clarkson* (p.561), the AAT considered for the first time the impact of s.3(8) of the *Social Security Act*, which effectively puts an end to the idea of 'separation under the one roof' in the Act. This provision, introduced after the May 1987 Economic Statement, requires that a formerly married couple be treated as still married, if they continue to live (for more than 6 months, or 12 months in some circumstances) in the 'same home', where that home is their 'former matrimonial home'. In this case, the AAT decided that the applicant should be treated as a married person, because she was living in the 'same home', being the 'former matrimonal home', as her former husband (having been divorced in 1985). Their occupation of separate sleeping and living areas was not enough, the AAT said, to prevent them living in the 'same home', because they used common cooking and washing facilities.

The practical result of this decision (and, presumably the result intended by the Government when it sponsored the amendment which now appears in s.3(8), is punitive. The applicant, who was permanently incapacitated for work, was denied invalid pension because of her former husband's income: yet she has no claim on her former husband for financial support; and she is incapable of earning an income. Her only way of regaining her invalid pension (or any other form of income support) would be to move out - into the impossibly expensive private housing market or into the over-stretched public sector. Is this another example of irrational social policy? Or is there (malign) method in the madness?

Proving cohabitation

Also noted in this issue are three AAT decisions which suggest a conservative approach by the Tribunal to DSS assertions that a person is living in a de facto relationship: in *Shine* (p.562) the AAT discounted evidence based on rumour and hearsay; in *Horvath* (p.560) the AAT said it did not regard as persuasive, admissions signed by the applicant and her alleged de facto husband, because those admissions had been drafted by a DSS officer and made under financial pressure; and in *Mourad* (p.562) the AAT stressed the value of evidence given by the applicant and her family.

On the other hand, the Federal Court decision in *Kershaw* (p.569) emphasised that the proper standard of proof before the AAT is 'the balance of probability'; and that the Tribunal is not obliged to 'give the benefit of the doubt' to an applicant when considering whether she was living in a de facto relationship.

[P.H.]

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