

Just prior to the Commissioner becoming entrusted with the estate, Anna Hack had sold her house for the sum of \$170 000. The Commissioner concluded that this sum was inadequate and the purchaser, Mr Kelly, had acted unconscionably. He took action to have the sale declared void. The proceeds of the sale were held in trust pending the court action, after which the Commissioner planned to return the money to Mr Kelly. The applicant to these proceedings was living frugally, assisted by donations from neighbours. She had been allowed to remain on her former property.

**Proof of age**

Normal evidentiary proof was unavailable but the AAT accepted a statutory declaration from a neighbour, and a photograph, as sufficient to establish, on the balance of probabilities, that the applicant was over 60 years of age.

**Income**

The second issue was whether interest earned upon the money paid for the purchase of the house was within the definition of income in the former s.6(1) of the *Social Security Act*. The Commissioner submitted that he, not the applicant, received the interest, and the applicant did not have the use or benefit of it. The Tribunal rejected this because 'the Commissioner is acting in the best interests of the applicant'. While the interest is credited to the applicant the use of it was confined by the Commissioner to getting her house back. This interest was thus 'both received by the applicant and is for her use and benefit'. The Tribunal noted that the precedents of *Re Flannery* (1986)11 ALD 385 (upheld by the Federal Court) and *Re Melbourne* (1988) no. 4208, supported its conclusion.

**The AAT regrets...**

The Tribunal regretted that it had to find against the applicant who, had she not sold her house would be entitled to age pension. It noted that if she gave up the quest to get her house back she would still be so entitled.

[B.W]

**Sickness benefit: arrears**

GREER and SECRETARY TO DSS (No. N88/38)

Decided: 2 June 1988 by

B. J. McMahon

Mr Greer claimed sickness benefit on 9 April 1984 and was paid until 8 October 1986. Payment ceased when he

failed to lodge medical certificates. Sickness benefit was reclaimed on 14 April 1987 and granted from 27 March 1987. He requested that arrears from October 1986 until 26 March 1987 be paid.

Psychiatric evidence was provided by Drs Litcher, Lambert, Greenway and Hansen, all of whom had previously supplied medical certificates. The Tribunal cited a report by Dr Greenway which indicated that the applicant was suffering from 'victim behaviour'. The diagnosis at the time of the appeal was given by Dr Hansen who reported that the applicant suffered a paranoid personality disorder 'characterised by multiple litigation, a remarkably one sided view of the law and a somewhat paranoid and decidedly idiosyncratic attitude to the world'.

**The legislation**

The relevant legislation was that in force prior to 1 July 1987.

The AAT said there had not been a cancellation of benefit, but that in the absence of medical evidence there was simply no benefit 'on foot'. Section 121 dealing with cancellation therefore had no application. The sections for consideration were 119(2), and (3) of the *Social Security Act*.

**The decision**

The AAT decided that the failure to lodge the claim with appropriate evidence was due to the previously accepted cause of the incapacity. The applicant's litigation was not a hobby but a manifestation of the incapacitating disease itself. The inability to concentrate on anything other than the litigation prevented him seeing his psychiatrist at the relevant time. He had therefore made out his case that the failure to lodge was due to the cause of his incapacity, combined with other sufficient cause which was more or less related to that incapacity, and to the underlying cause of the incapacity. Arrears were ordered to be paid.

[B.W]

**Mobility allowance**

ISLES and SECRETARY TO DSS

(No. A87/163)

Decided: 22 June 1988 by R. K. Todd

The Tribunal affirmed a decision to refuse to pay the applicant a mobility allowance. The relevant section is 146(1), previously s.133RB(1). The applicant, an invalid pensioner, suffered from a physical disability which prevented him using public

transport without substantial assistance. He thus satisfied one of the prerequisites to entitlement. He began working for Meals on Wheels nine years ago as a volunteer. In the last two and a half years he has worked in the kitchens five days a week.

To qualify for a mobility allowance the applicant needed to be 'engaged on a continuing basis for not less than 20 hours in each week' (s.146(1)(b)(ii)), and that he was engaged in 'gainful employment'. While he was able to establish the first requirement his application failed because he was unable to show he was engaged in gainful employment.

The Tribunal accepted English cases which indicated that the words do not always mean 'profitable or lucrative' employment. Provision of a small amount of money, or payment in non-monetary form might suffice. But to succeed in gaining a mobility allowance an applicant must show there was in existence a relationship of employment between the applicant and the person providing the payment. In this case there was no contract of service and no legal obligation. The applicant was a volunteer and there was no obligation on Meals on Wheels to provide him with anything in return for his labour.

[B.W]

**Income: war widow's pension**

RYAN and SECRETARY TO DSS (No. V87/650)

Decided: 6 July 1988 by

I.R. Thompson.

The AAT affirmed a DSS decision that the rate of invalid pension and wife's pension payable to a married couple should be reduced to take account of a war widow's pension being paid to the wife.

Mrs Ryan was receiving a war widow's pension under the *Veterans' Entitlements Act*, as the death of her late husband had been due to his war service. Prior to the *Social Security and Veterans' Affairs (Miscellaneous Amendments) Act 1986*, this pension would have terminated on her re-marriage; but that Act preserved her right to the pension on re-marriage. She then married; and her husband was granted an invalid pension, and she a wife's pension, in June 1987.

Mrs Ryan argued that her war widow's pension was compensation for the loss of her husband; and that she