

Sickness benefit: additional benefit for a step-child

DUNN and SECRETARY TO DSS
(No. 5234)

Decided: 14 July 1989 by
W.J.F. Purcell.

Allan Dunn was granted sickness benefit in December 1987. The rate of that benefit included an additional payment for his step-son, J. However, the DSS cancelled payment of the additional benefit from 3 February 1988; and Dunn asked the AAT to review that decision.

The legislation

Section 118(11) provides that the rate of benefit payable to a person can be increased where that person has a 'dependent child' or 'is making regular contributions towards the maintenance of a child'.

The term 'dependent child' is defined in s.3(1) as 'a child under the age of 16 years who is in the custody, care and control of the person'.

Section 118(12) gives the Secretary a discretion not to pay additional benefit for a child under s.118(11) where another person is receiving additional benefit or pension in respect of the child or where the person's regular contributions to the maintenance of the child are less than the additional benefit which would be payable.

The evidence

During the period in question, from February to December 1988, the Family Court had ordered that the custody of J should be shared between his mother (Dunn's present wife) and his father, on the basis that J spent alternate weeks with his mother and his father.

Dunn claimed that he was entitled to additional benefit in respect of his step-son, J, because Dunn was making regular contributions towards J's maintenance, by providing food, clothing and accommodation during alternate weeks.

The Tribunal also heard evidence from J's mother and father (who had been joined as a party to these proceedings by an order of the AAT).

The AAT's decision

The Tribunal decided that custody, care and control over J was shared equally between J's mother and father during the relevant period and that J was the 'dependent child' of his mother and his father. J could not be taken to be the 'dependent child' of Dunn.

Nor was Dunn making regular contributions towards J's maintenance during the period in question, the AAT said. This reference in s.118(11) contemplated—

'regular periodic payments of maintenance at a fixed rate for the benefit of a child, and not maintenance of a child by providing food, clothing and accommodation for that child whilst the child is in that person's care and control.'

(Reasons, para.16)

This reading, the AAT said, was supported by the reference in s.118(12) to the situation where a person's regular contribution towards a child's maintenance was less than the rate of additional benefit payable in respect of such a child under s.118(11): Reasons, para.16.

Formal decision

The AAT affirmed the decision under review.

[P.H.]



Supporting parent's benefit: overpayment; de facto relationship

DUNN and SECRETARY TO DSS
(No. 5426)

Decided: 13 October 1989 by
M.D. Allen.

Marquet Dunn was granted supporting parent's benefit from July 1983 after she indicated she no longer lived in a *de facto* relationship with B, the father of her daughter.

In November 1984 she informed the DSS she wished to cancel the benefit as she had recommenced living at the same address as B.

In April 1985 she lodged a second application for the benefit claiming she had left the address where she lived with B, and that while living with him, she

had not been in a *de facto* relationship. She stated she had resided with him as she had nowhere else to go at the time and had been estranged from B since April 1983. She was granted benefit from April 1985.

The benefit was cancelled at Dunn's request from 8 August 1985 after she began work. In September 1985 she reapplied successfully for supporting parent's benefit.

B died in July 1985. Dunn then began proceedings in the NSW Workers' Compensation Court, which made an order stating that Dunn had lived with B as his wife on a permanent *bona fide* domestic basis for at least two years prior to his death and that she and her daughter were dependent on B at the time of his death. The Court awarded Dunn compensation of \$35 000.

The DSS raised an overpayment of \$8143 on the basis that Dunn had been living in a *bona fide* domestic relationship with B while receiving supporting parent's benefit, namely from July 1983 to November 1984.

Credibility

The Tribunal described Dunn as 'a woman who will tailor her evidence so as to give that answer which she regards as best advancing her interests at that time'. It accepted only that part of her evidence which was corroborated.

Findings

Evidence, in the form of written statements, was given to the AAT by Dunn's 2 adult daughters and 3 other persons. The Tribunal also had the transcript of the Workers Compensation Court proceedings, where Dunn had answered questions about her relationship with B.

Balancing the conflicting accounts of Dunn's relationship with B, the AAT found clear evidence that they were cohabiting in June 1985, and decided that it was 'more probable than not' that they had lived together from November 1984 (there being no independent evidence to corroborate Dunn's claim that they were estranged).

However, the AAT found that Dunn was not living with B between July 1983 and November 1984.

It followed, the AAT said, that Dunn had been overpaid only for the period from 4 April to 8 August 1985. [The AAT did not explain how this period could be reconciled with the fact that B died on 16 July 1985.]

Financial hardship

The Tribunal considered the applicant's financial circumstances and