

Her former husband is a classic battler of humble bearing and minimal means. Out of a sense of fundamental decency and responsibility, and with no sense of restoring a marriage relationship, he came back to the house to help the applicant with the physical burdens of caring for the children and of carrying out the basic tasks around the house that she cannot manage. The consequences for the children and for the applicant of this decision, one that I have concluded is inescapable, are likely to be serious.'

[B.W.]

Handicapped child's allowance: late claim

FLETT and SECRETARY TO DSS (No. 4933)

Decided: 21 February 1989

by J.A. Kiosoglous.

The AAT affirmed a DSS decision not to backdate payment of handicapped child's allowance granted to Susan Flett.

Flett's child was born in February 1983. In 1985, the child was diagnosed as an asthmatic. Flett said that she had found it necessary to give the child constant care and attention in their home from January 1986. However, after examining the medical evidence, the AAT concluded that the child's disability had not been sufficiently severe to warrant payment of handicapped child's allowance from January 1986.

Flett lodged her claim for handicapped child's allowance on 18 February 1987 and the DSS granted this claim from the next allowance pay-day, 15 March 1987, in accordance with s.102(1)(b) of the *Social Security Act*, as it then stood.

In this appeal, Flett sought payment of the allowance from January 1986 and, although the AAT said that she had not been qualified for the allowance from that earlier date, the AAT considered whether there might be 'special circumstances' which would authorise backdating of the allowance to some date prior to February 1987. (At the time, s.102(1)(a) and s.105R permitted backdating of handicapped child's allowance where 'special circumstances' could be shown for the delay in lodging the claim.)

Flett told the Tribunal that she had first learned of the existence of handicapped child's allowance in March 1986. In May 1986 she had asked her child's treating specialist whether she would qualify for the allowance. That specialist had told her she would not be eligible. Flett had accepted that advice until February 1987, when a financial counsellor had told her that she might qualify.

The AAT said that Flett's ignorance of the existence of the allowance was not a 'special circumstance': the AAT referred to the earlier decision *Scrivener* (1986) 31 SSR 386.

Nor was the misleading advice given to Flett by her child's treating specialist a 'special circumstance':

'Doctor Godfrey was not a professional welfare adviser nor was he an employee of the respondent. He offered his opinion as a medical specialist that Matthew's medical condition could not qualify him for an allowance. This does not constitute "special circumstances".'

(Reasons, para. 22)

In support of this conclusion, the AAT referred to the Tribunal's decision in *Corbett* (No. 2) (1986) SSR 387.

Flett also claimed that her family circumstances had made it difficult for her to learn about the existence of handicapped child's allowance. She was responsible for caring for two children and her invalid parents. The AAT said that these were not sufficient to constitute 'special circumstances'.

[P.H.]

HALL and SECRETARY TO DSS (No. 4745)

Decided: 9 December 1988

by J.O. Ballard.

Hall appealed against a DSS decision to refuse to backdate a handicapped child's allowance for her son C.

The legislation

The allowance was granted in January 1987 and the AAT applied the legislation in force prior to 16 December 1987, which allowed backdating of such a claim if there were 'special circumstances' (formerly s.88 of the *Social Security Act*).

The evidence

C was born in April 1978 and was first seen by a Dr Chan in November 1981. He had said that C suffered from

frequent bed wetting, psychological problems, tonsillitis, bilateral flat feet and failure to gain weight.

Hall had applied for a handicapped child's allowance for another child, R, in 1982. She told the AAT that she had also tried to apply for an allowance for C at that time, but that a DSS officer had told her C would be ineligible because he was not in a wheelchair nor unable to read or write. Hall's present husband said that he had seen the officer place the application for C in the bin.

Since then, Hall had moved around from town to town, in Queensland and Western Australia, trying to avoid her abusive first husband. Hall said that she had been told by a doctor and private welfare organisations that C was not eligible for a handicapped child's allowance.

Hall and her husband were both invalid pensioners and Hall was illiterate.

Hall's husband identified the DSS officer who had dealt with their claim as Mrs D. She gave evidence to the AAT about the procedures for dealing with claims.

Mrs D said that in no circumstances would a counter officer not accept a claim. She was positive she had not torn up any claim forms, but did not recognise Mr and Mrs Hall.

'Special circumstances'?

The AAT decided not to accept the evidence of Mr Hall. It observed that he had had many dealings with the DSS, including an overpayment matter about which he was still angry. The AAT said:

'With Mr Hall's history of dealings with the Department I cannot believe that he would have allowed the occurrences he now describes in 1982 [sic] to stand unchallenged to 1987.'

The Tribunal also found that any incorrect advice as to C's eligibility for handicapped child's allowance did not amount to special circumstances. It noted that Hall's solicitor had declined to argue that social isolation was relevant in this case to establishing 'special circumstances'.

Formal decision

The AAT affirmed the decision under review.

[J.M.]