

incapacitated for work. However it decided that the degree of incapacity was less than 85%.

Although her medical condition precluded her from finding certain types of work, for example unskilled, physical work, she was capable of finding employment within the general labour market of people who had successfully completed a secondary education.

Formal decision

The AAT affirmed the decision under review.

[B.W.]

AAT's jurisdiction: decision under review

SIKETA and SSECRETARY TO DSS

(No. 4776)

Decided: 25 November 1988

by R.A. Balmford.

Annette Siketa was granted an invalid pension in 1979, shortly after suffering serious injuries to her eyes in a motor vehicle accident. The pension was granted on the basis that Siketa was permanently blind.

In 1984, Siketa obtained full-time employment with the public service. In June 1987, an officer of the DSS reviewed her case and decided that she was 'not permanently blind to the extent required for invalid pension under the *Social Security Act*'. The DSS then wrote to Siketa, telling her that she could 'no longer be considered as permanently blind' and that her pension would cease from 1 October 1987.

With the assistance of a DSS review officer, Siketa then appealed to the SSAT against 'the decision to cancel my invalid pension from 1 October 1987'. The SSAT considered whether Siketa was permanently blind; and recommended to the Secretary to the DSS that the decision of June 1987 should be affirmed.

A delegate of the Secretary then made a decision which affirmed the 'proposed cancellation of invalid pension'.

Siketa applied to the AAT for review of that decision.

Jurisdiction

At the time of Siketa's appeal to the AAT, s.16(2) of the *Social Security Act* allowed a person, who had been affected by a decision of an officer under the act to appeal to the Secretary, who could affirm, vary or set aside the decision.

Section 17(1) provided that, where the Secretary had affirmed, varied or set aside a decision of an officer, which had been reviewed by an SSAT, an application could be made to the AAT for review of the Secretary's decision.

The AAT pointed out that the original decision, made in June 1987, was not a decision to cancel Siketa's invalid pension, but a decision that she was not permanently blind. Although that June 1987 decision had been reviewed by the SSAT, it had not been affirmed, varied or set aside by the Secretary or the Secretary's delegate. It followed that the preconditions for an appeal to the AAT had not been met; and that, accordingly, the AAT had no jurisdiction to review any of the decisions made in this matter.

The AAT pointed out that the cause of the confusion was the letter written to Siketa following the June 1987 decision. That letter had not set out the precise terms of the decision but had attempted to paraphrase the decision:

'It may be that the form of the letter derived from an intention in the Department to make its correspondence recipient-friendly and reduce what is seen as an undesirable degree of formality in official correspondence and other documents. Laudable though that intention is, it should be implemented with care. The history of this matter highlights the risks inherent in paraphrasing material which has, or should have, legal effect.'

(Reasons, para.28)

Permanent incapacity for work

Although the AAT had decided that it did not have jurisdiction to review this matter, it went on to express its opinion on Siketa's eligibility.

The AAT noted that Siketa was in permanent and fulltime employment, as a telephonist, and that she had worked in this position for some 4 years. The Tribunal endorsed what had been said in the earlier decisions of *Kenna* (1983) 5 ALN N213 and *Galvin* (1985) 24 SSR 291, to the effect that a person could not be regarded as incapacitated for work to the extent required by the *Social Security Act* when the person was 'continuing to work effectively, even if under very great difficulties, at a skilled trade ...'

It followed, the Tribunal said, that Siketa could not be regarded

'permanently incapacitated for work' so as to qualify for an invalid pension under s.28 of the *Social Security Act*.

Permanent blindness

In the present case the evidence was that, unless Siketa wore contact lenses, she was extremely visually handicapped - i.e., she was more than 95% incapacitated in the right eye and 75% in the left eye. However, if she wore contact lenses, her incapacity was reduced to 70% in the right eye and 10% in the left eye.

The AAT adopted the approach taken in *Smith* (1986) 31 SSR 396, that a person's blindness was to be measured by 'what can be seen with normal correction by spectacles or contact lenses'.

The Tribunal also adopted the views expressed in *Cowley* (1986) 33 SSR 423 to the effect that a person was blind if he or she was totally blind or if the effect on the person's day to day living was essentially the same as the effect of total blindness.

In the present case, Siketa was able to wear her contact lenses for 12 hours a day, was able to carry out her work (which involved some reading) satisfactorily and held a driver's licence (although she only drove for short distances). On the basis of the approach taken in *Smith and Cowley*, the AAT said, it 'would not be able to find that Mrs Siketa is "permanently blind", in terms of s.28 (of the Act)': Reasons, para.41)

Formal decision

The AAT directed that this matter be removed from the list of matters before the Tribunal.

[P.H.]

Claim for another benefit

LOMBARDI and SECRETARY TO DSS

(No. 4701)

Decided: 5 October 1988

by H.E. Hallowes.

Michael Lombardi sought review of a DSS decision to pay him sickness benefit only from 11 August 1987, the day on which he lodged a claim for sickness benefit.