a person who is sick'. His previous work history was the main bar to him obtaining work and he had got out of the habit of working. He was, the AAT said, permanently incapacitated for work within s.27(a).

Section 27(b)

Although Vella satisfied s.27(a) of the Act he could not satisfy s.27(b). The AAT found that, although Vella was an anxious man, he did not suffer 'mental impairment'. This finding, the Tribunal said, put Vella in a difficult position. He had been in receipt of some income maintenance ever since his car accident and was at present in receipt of sickness benefit. However, sickness benefit was intended for those whose incapacity is temporary.

Formal decision

The AAT affirmed the decision under review.

[B.W.]

ROBERTSON and SECRETARY TO DSS

(No. 5372)

Decided: 8 September 1989 by H.E. Hallowes.

The AAT *set aside* a DSS decision to cancel an invalid pension held by a 42-year-old woman who suffered from asthma, lumbar disc degeneration and wrist pain.

Robertson had been granted an invalid pension in 1984, on the basis of her severe asthma which required continuous medication. Following the introduction of s.27(b) into the *Social Security Act* in July 1987, the DSS decided to cancel Robertson's invalid pension.

The DSS defended this cancellation because Robertson was living in an area of limited employment opportunities, she was aged 42 years with minimal education and few work skills and she had no recent work history. It followed, the DSS argued, that, if Robertson was 85% incapacitated for work, less than half of that incapacity was caused by her physical impairment.

One of her doctors reported that frequent attacks of asthma could disable her from regular employment; and Robertson told the AAT 'that every time she had worked she had ended up in hospital with asthma'.

The AAT concluded that Robertson was at least 85% permanently incapacitated for work, meaning full-time work (as explained in *Mann* (1982) 8 *SSR* 75).

Turning to s.27(b) of the *Social Security Act* (which requires that at least 50% of a person's incapacity for work be caused by permanent physical or mental impairment) the AAT found that Robertson satisfied this requirement. Her asthma and her back condition limited the range of work which she could undertake, and although she had some capacity for short periods of casual employment, she could not attract an employer who was prepared to engage and remunerate her because she was 'always at risk of exacerbating both her asthma and her back condition'.

The non-medical factors (such as lack of skills, work history, and lack of means of transport) 'do not constitute more than 50% of the cause of a lack of a job offer': Reasons, para. 19.

[P.H.]

Invalid pension: incapacitated while in Australia

CHAPARRO and SECRETARY TO DSS

(No. 5373)

Decided: 8 September 1989 by H.E. Hallowes.

Edna Chaparro had migrated to Australia from Chile in 1984. She was then aged 35 years. Chaparro had worked in Chile as a hairdresser for more than 15 years before leaving Chile with her husband and two children.

On her arrival in Australia, Chaparro found that she would need to undertake a six month course to upgrade her qualifications and she enrolled in English language classes before undertaking that course. However, before she could complete the English language classes, she was found to be suffering from epilepsy.

Chaparro then claimed an invalid pension, which claim was rejected by the DSS on the ground that, although she was permanently incapacitated for work, she had not become incapacitated for work in Australia. Chaparro asked the AAT to review that decision.

The legislation

At the time of the decision under review, s.24 of the *Social Security Act* provided that a person who was 'permanently incapacitated for work' was qualified for an invalid pension.

However, s.25(1) provided that an invalid pension should not be granted to a person unless that person 'became permanently incapacitated for work ... in Australia ...'

The Tribunal's decision

The AAT accepted Chaparro's evidence that she had been capable of working in Chile before coming to Australia, although she had suffered dizzy spells and some loss of vision and nausea (early symptoms of her epilepsy) in Chile.

The Tribunal said that the question of Chaparro's incapacity for work depended on a combination of medical and non-medical factors: the present s.27(b) of the Act was not in force at the time when she had claimed her invalid pension.

Chaparro's lack of English language skills and Australian hairdressing qualifications meant that the only work available to her would have been 'light production work on an assembly line'. But the attacks of dizziness which she had experienced in Chile would have made this work unsuitable for her. The AAT concluded as follows:

> 'She "never was as sick" in Chile as she was in Australia but the symptoms she had in Chile were a material factor in her incapacity for work on arrival. Together with her lack of marketable skills, her age, and the limitations placed on her employability by her lack of English satisfies me that she did not become permanently incapacitated for work while in Australia. She was permanently incapacitated for work on arrival. Had the relevant provisions of the Act, now requiring 50% of the permanent incapacity to be directly caused by a permanent physical impairment, come into force before the applicant migrated to Australia, the test to be applied in this application would have been different.'

(Reasons, para. 15)

In coming to this conclusion, the AAT referred to the earlier decision in *Yusuf* (1984) 22 *SSR* 259, where a similar approach had been adopted to the same issue.

Formal decision

The AAT affirmed the decision under review.

[J.M.]