

given to a child suffering from coeliac disease against the care and attention normally given to a child suffering from that disease; whereas s.101 required that 'substantially more care and attention' be measured against the care and attention given to a child who did not suffer from the disease.

Accordingly, the AAT decided to approach this case without regard to the Departmental instructions. After considering the evidence given about the level of care and attention provided by Bosworth to her child and measuring that care and attention against the care and attention required by a child free of such disability, the AAT concluded that the child met the requirements of s.101 and was a 'disabled child'; and that Bosworth was qualified for child disability allowance.

#### Formal decision

The AAT affirmed the decision of the SSAT.

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## Cohabitation

### SJOBERG and SECRETARY TO DSS

(No. 5256)

Decided: 25 July 1989 by D.W. Muller.

Carolina Sjoberg was granted a widow's pension in 1968, after the death of her husband. In 1984, she transferred to an age pension, when she reached the age of 60.

Over the years, Sjoberg took in a number of boarders, one of whom was a man, F. In 1975, F was injured and granted an invalid pension. On medical advice, he decided to move to Queensland.

Because of his serious disabilities, F needed help and he asked Sjoberg to move to Queensland and be his housekeeper. They agreed that Sjoberg would undertake this role in return for F transferring a half-interest in F's house to her.

In 1978, the DSS decided that Sjoberg and F were living in a *de facto* relationship and re-assessed their pensions at the married rates. An SSAT appeal was unsuccessful.

In 1988, Sjoberg asked the DSS to review the 1978 decision. When the

DSS affirmed its earlier decision, she appealed to the AAT.

#### The legislation

Section 3(1) of the *Social Security Act* defines a 'married person' as including a 'de facto spouse'. The latter term is defined to mean —

'a person who is living with another person of the opposite sex as the spouse of that other person on a *bona fide* domestic basis although not legally married to that other person ...'

#### The DSS decision

The evidence on which the DSS had based its decision was that Sjoberg and F had lived in the same house for more than 11 years; they were 'joint tenants' of that house; they had made wills, leaving their shares in the house to each other (unnecessarily, as they were joint tenants); and they shared household expenses and chores.

On the other hand, they had separate social and recreation interests, had never had a sexual relationship nor shared a bed-room, and saw their relationship as employer/employee.

On that evidence, the DSS had decided that they were 'residing together in a situation similar to many married persons'; and the SSAT had said that their relationship was 'similar to that of a married couple'.

#### The AAT decision

The AAT said that the DSS and the SSAT had adopted the wrong approach. It was 'quite unfair' to compare their relationship with a 'burnt out' marriage:

'There are no doubt many hundreds of married couples in Australia who live together without a sexual relationship, without even any affection for each other, but such relationships are usually only the sad result of the ravages of the years. It would be a rare marriage in which the participants had never had a sexual relationship with each other and even rarer in which they had occupied separate bedrooms from the beginning of the marriage.'

(Reasons, para. 6)

The AAT said that to use 'marriages which are in their death throes' as the basis for assessing relationships between men and women involved 'a too cynical view of the institution of marriage'.

Rather, the relationship between Sjoberg and F should be compared to those elderly or infirm people who come together for mutual assistance. These were often relationships between siblings, parents and children or people of the same gender:

'In such relationships there is no possibility that the parties are living together on any *bona fide* domestic basis.'

(Reasons, para. 7)

#### Formal decision

The AAT set aside the decision under review, decided that Sjoberg had never been the *de facto* spouse of F, and remitted the matter to the Secretary 'for further consideration'.

[P.H.]



### GREAVES AND SECRETARY TO DSS

(No. 5317)

Decided: 22 August 1989 by D.W. Muller.

The AAT *affirmed* a DSS decision to cancel Christine Greaves' widow's pension for the period January 1987 to June 1988, on the basis that she was living in a marriage-like relationship with a man, D.

Greaves was a divorced woman with 2 children. D lived in Greaves' house in South Australia for 6 months in early 1987. In June 1987, Greaves decided to move to Brisbane ('to see Expo', she said), and she and D travelled there together. Greaves bought a house in Brisbane and she, her children and D moved into the house. Throughout this period, D was receiving unemployment benefits at the single rate.

In July 1988, Greaves sold the Brisbane house. She and her children returned to Adelaide and D stayed in Brisbane.

D paid a part of the household expenses, but did not pay rent or board. He had a separate bedroom, but there was a sexual relationship between Greaves and D, which they described as casual and not similar to a marriage relationship.

The AAT concluded that there was 'a *de facto* family unit' comprising D, Greaves and her 2 children:

'The relationship between Greaves and D may well have been different to that which each had experienced in former matrimonial life but new partners and greater maturity create new situations and changed relationships.'

(Reasons, para. 7)

Greaves and D had planned, the AAT said, to holiday in Queensland together, over the time when Expo was operating, and 'they intended that the Commonwealth Government should fund the holiday by way of social security benefits': Reasons, para. 6.

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