

1986). In that case, Helsham owned a house in Sydney but lived in a caravan in Queensland where he was pursuing his interest in opal mining. The AAT had held that Helsham's principal home was the caravan and therefore he was a home owner for the purposes of the application of the assets test.

After referring to definitions of 'campervan', 'home' and 'residence' from the *Macquarie Dictionary* and the *Shorter Oxford Dictionary* the Tribunal stated that it had no difficulty in finding that such a vehicle could properly be described as a campervan within the definition provided in the *Macquarie Dictionary*. That definition provided that a campervan is 'a motor van in which people may live, usually temporarily, furnished with beds, stove, sink etc.'

The Tribunal went on to note that the General Orders Service Pensions were purely a statement of policy for the guidance of departmental officers and were not in any sense binding on the Tribunal. However the Tribunal was satisfied that on the whole of the evidence before it, the campervan was a residence and the principal home of Buchanan and his wife for the purposes of the application of the assets test under s.50(1)(a)(ii) of the *Veterans' Entitlements Act*. Accordingly, Buchanan was a home owner for the relevant period.

Formal decision

The AAT affirmed the decision under review.

[R.G.]

Invalid pension: incapacity for work

THIEL and SECRETARY TO DSS (No. Q89/32)

Decided: 25 July 1989 by Barry J, N.C. Davis and K.J. Lynch.

The AAT affirmed a decision of the DSS to cancel an invalid pension held by a 37-year-old man, who had injured his knee in 1984.

It appeared that Thiel's knee injury had left him with some residual incapacity but that this was not sufficient to qualify him for an invalid

pension. But Thiel relied upon the opinion of a psychiatrist, given in December 1988, that he was suffering from a depressive condition which, in combination with his physical disability, made him more than 85 per cent incapacitated for work.

However, a second report from that psychiatrist, given in July 1989, noted that Thiel's psychiatric condition had improved and did not quantify the current extent of his disability. The DSS also produced a psychiatric report, dated April 1989, which concluded that Thiel was not suffering from a depressive illness or any other serious psychiatric disorder; and that, if there was a psychiatric disability, it would only be mild, 'perhaps in the 10 to 20 per cent range'.

In comparing these two opinions, the AAT noted that the psychiatrist consulted by the DSS had attended the Tribunal hearing and been subjected to cross-examination; whereas Thiel's psychiatrist had not been called as a witness and her July 1989 report had been 'ambiguous and uncertain'. The AAT commented:

'If the applicant elects not to call a specialist doctor in support of his case, that is a risk he must face. We see no reason to reject the forceful unambiguous evidence of [the psychiatrist consulted by the DSS].'

(Reasons, p.11)

[P.H.]

CASSIN and SECRETARY TO DSS (No. 5460)

Decided: 27 September 1989 by M.D. Allen.

The AAT affirmed a DSS decision to refuse to grant invalid pension to a 52-year-old man whose disabilities prevented him from undertaking his former occupation of a slaughterman but left him with a residual capacity for light work.

The AAT accepted that Cassin was unlikely to find this light work but this was 'more a circumstance of the economic situation rather than anything directly related to the actual medical impairment of the applicant'.

It followed, the AAT said, that 50% of Cassin's permanent incapacity for work was not caused by any permanent physical or mental impairment, which only caused 'a slight incapacity which prevents him from engaging in any heavy work' but he could do light work if that work were available.

[P.H.]

GOTCH and SECRETARY TO DSS (No. S87/265)

Decided: 2 November 1989 by W.J.F. Purcell.

The AAT set aside a DSS decision, made in December 1986, to refuse an invalid pension to a 32-year-old man who had suffered persistent and severe headaches since a fall in 1983.

The issue before the AAT was whether Gotch was eligible for an invalid pension at the time when he lodged his claim in November 1986. At that time, ss.23 and 24 of the *Social Security Act* provided that a person would qualify for an invalid pension if the person was at least 85% permanently incapacitated for work. The requirement that at least 50% of that incapacity be due to a permanent physical or mental impairment was not part of the Act at that time.

Gotch had been examined on behalf of the DSS by a psychiatrist who reported that it would be inadvisable for the DSS to grant him an invalid pension, because this would reinforce the 'sick role' which Gotch had adopted. The AAT queried the validity of that psychiatrist's approach, which appeared to be directed towards treating Gotch's condition, rather than assessing his eligibility for invalid pension. However, the AAT did not pursue this point as it preferred evidence given by Gotch's treating psychiatrist.

A particular problem in this case was that, despite extensive investigations, no organic basis for Gotch's severe headaches and an associated memory loss had been identified. But Gotch's treating psychiatrist had diagnosed 'somatoform pain disorder' — a chronic pain syndrome, where the severity or extent of the pain complained of is out of keeping with the underlying physical pathology. This psychiatrist said that the disorder was difficult to treat and that it was unlikely that there would be any rapid resolution over the next few years.

The AAT accepted that evidence and concluded that Gotch was permanently incapacitated for work to the extent of at least 85% and that, accordingly, he had been qualified for an invalid pension at all times since November 1986.

[P.H.]