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SOCIAL SECURITY

Reporter

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Opinion

Constant pattern of issues

As the Administrative Appeals Tribunal completes its 10th year of social security reviews, the pattern of issues brought to the Tribunal has retained several constant features.

Invalid pensions and the assessment of incapacity for work remain major issues, although the focus has now shifted to the link between incapacity and impairment (the concept introduced by s.27(b) of the *Social Security Act* in July 1987). In this Reporter, the decisions in *Kibar* (p.704) and *Mancuso* (p.705) take a relatively broad approach to the role of impairment in causing incapacity for work — an approach which acknowledges the restricted work opportunities open to most immigrants, even when they are perfectly fit. A third decision, *Mancer* (p.703), undertakes the elusive task of identifying the time when a person became incapacitated for work, in order to decide whether the incapacity developed before or after a person's arrival in Australia.

The replacement of handicapped child's allowance with child disability allowance has left considerable room for disputes over eligibility — see *Kymantis* (p.707).

Overpayment recovery continues to generate many applications for review. In *Ford* (p.706), the AAT considered the link between criminal punishment

and civil recovery; and concluded that civil recovery should be waived because it would amount to double punishment of the applicant. This could turn out to be the beginning of an important limitation on DSS recovery action.

Perhaps the busiest single aspect of the AAT's current work arises out of the relationship between compensation awards and social security payments. This has always been a fertile source of appeals; but the extension of the recovery provisions and the introduction of a preclusion rule in May 1987 have intensified these problems. Several AAT decisions (*Whelan*, *Hunt*, *Manatakis*, *Cavaleri* — pp.698-700) and one Federal Court decision (*Littlejohn* — p.712) look at a central issue in this context: are the terms of a compensation award conclusive for the purpose of determining whether that award is available for recovery or preclusion?

Whelan (p.698) adopts two interesting views which, if correct, would limit the impact of the recovery and preclusion provisions: first, that a non-consent award is not subject to the 50% rule; and, second, that the provisions are only available when the compensation award includes a payment for the same incapacity. The first of these is probably correct; but the second is almost certainly wrong (because of the width of the recovery and preclusion provisions introduced in May 1987).

[P.H.]

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