tasks which required fine motor skills — such as doing up buttons, cutting certain food and opening bottles. He supervised various exercises and ensured that she took her medication (to which she particularly objected).

T attended primary school under an integration program in which her participation in classroom and other activities was structured and supervised by an integration teacher.

'Substantially more' care and attention

The AAT said that it was satisfied that T had a physical disability and that she needed care and attention on a daily basis which was more than the care and attention required by a child of the same age without a disability. The question was whether that care and attention was 'substantially more'. The AAT referred to a decision in *Whiteford and Commissioner for Superannuation* (1987) 6 AAR 70, where the AAT had said:

> 'The meaning of "substantially" must, therefore, be considerably higher up the scale of substantiality than "not trivial, minimal, or nominal".'

The AAT said that T's physical disability meant that she required supervision in many of her tasks, including exercises, preparation of food, dressing, washing her hair and taking medication. The AAT explained its approach to the issue presented in this case:

> 'The care and attention a child needs must be more than a minimal amount of care and attention over and above the care and attention a child without a disability needs, but it need not be care and attention such that the child is supervised at all times and assisted with all tasks. The term is here used in a comparative sense.'

(Reasons, para. 14)

The AAT said that it was satisfied that T placed demands on those who cared for her which were substantially more than the demands made by other children of the same age. There was, the AAT said, 'no escape for her father from the daily reminder that T cannot do those things expected of other 11-year-old girls who do not have a disability': Reasons, para. 15.

The evidence indicated that T was likely to need the present level of care and attention for an extended period, a period which was 'something less than the period covered by the term "permanently" used in the qualifications for invalid pension': Reasons, para. 16.

Finally, the AAT concluded that Kymantis was providing care and attention to T in their home on a daily basis. It did not matter that Kymantis had arranged for another person to supervise T after school, because of Kymantis' work commitments:

> '[T]he absence of a care giver and the delegation to another of the responsibility for care and attention does not mean that the person ceases to be qualified for the allowance.'

(Reasons, para. 17)

Formal decision

The AAT set aside the decision under review and remitted the matter to the Secretary with a direction that Kymantis was entitled to child disability allowance from April 1988, the date when he lodged his claim.

[P.H.]

Supporting parent's benefit: loan or income?

FOOTE and SECRETARY TO DSS (No. 5600)
Decided: 13 December 1989 by S.A. Forgie.

The Tribunal *affirmed* a decision of the DSS in finding that money received by Foote was income and that Foote had been overpaid $7235 supporting parent's benefit. Consideration of the discretion to waive recovery under the former s.186 [now numbered s.251] of the *Social Security Act* was adjourned.

The facts

At issue was whether or not money paid on behalf of Foote by her fiance (B) was a loan or a gift. Foote was a mother of 2 dependent children, and receiving supporting parent's benefit. In 1983 she bought a car. B gave her money for the car payments, as she was having trouble meeting them herself. She said it was agreed that, if the car was subsequently sold, she was to pay B back from the proceeds.

The car was sold but Foote did not repay B. Instead she bought another car. She required a further loan and B also paid the instalments on that loan. The car had many things wrong with it and the dealer 'was made to take it back' and to refund the money. B stopped making the payments in May or June 1987 at the time their engagement broke up. Evidence was given in the form of letters and a statutory declaration from B that he had loaned the money to Foote.

The decision

The Tribunal accepted Foote's evidence of her serious financial difficulties once her pension was cancelled. This and the difficulties she encountered in obtaining an interview with the DSS affected her state of mind when she signed a statement on 30 November 1987. The Tribunal thus took her state of mind into account in considering the contents of the statement (in which she had admitted receiving income from B).

However, the Tribunal said:

> 'Her actions [in buying the second car] do not accord with the then terms of the alleged loan agreements, and consequently I am unable to accept there was such a loan agreement.'

It was only after the engagement ended that B began to consider the money had been a loan which he wanted repaid.

The AAT concluded that the money had been provided by B as a gift, not a loan, and was therefore 'income' of Foote. The applicant was thus overpaid supporting parent's benefit as s.48 of the *Social Security Act* imposes an income test on that payment.

[B.W.]

Supporting parent's benefit: overpayment; de facto relationship

CLAY and SECRETARY TO DSS (No. 5554)
Decided: 19 December 1989 by D.W. Muller, D. Horrigan and W.A. De Maria.

Diane Clay asked the AAT to review a DSS decision to raise and recover an overpayment of $22 652 paid in supporting parent's benefit during a period when the DSS determined that she was living with C as his wife on a *bona fide* domestic basis.