Kamvissas received little or no psychiatric treatment or medication on his return to Greece until he learned, in 1978, that his invalid pension was to be cancelled. It was then he began to become entrenched in a pattern of illness behaviour and consulted doctors who certified that he was mentally ill. The Tribunal found,

> 'in 1986 Kamvissas was still consciously "acting up" and was not so far immersed in a pattern of illness behaviour and disabled by the manifestations of his inadequate personality as to be significantly incapacitated for manual work.'

Since the mid-1980s, psychiatrists had been prescribing psychotropic medication for Kamvissas as if he were a person suffering from a psychiatric illness. His financial situation and his drawn out dispute with the DSS had exacerbated his problems.

[B.W.]

Invalid pension: children outside Australia

BUCCI and SECRETARY TO DSS (No. 5867)
Decided: 3 May 1990 by H.E. Hallowes.

Simone Bucci migrated to Australia from Italy in 1955, when he was 22 years of age. In 1967 he returned to Italy and married. He then came back to Australia, leaving his wife in Italy.

Bucci continued to live in Australia, returning to Italy several times over the following years. His wife and 4 children continued to live in Italy and had never been to Australia.

In 1984, Bucci suffered an industrial injury and, following the completion of compensation proceedings, he was granted an invalid pension by the DSS from September 1988. This pension was paid at the single rate and included no additional pension for the 3 of his children who were still attending school in Italy.

In April 1989, Bucci advised the DSS that he wished to apply for family allowance; and he lodged a claim for family allowance supplement (FAS) on the same day. That claim was rejected.

On review, the SSAT affirmed the DSS decision to pay Bucci invalid pension at the single rate, without any additional pension for his children, and the DSS decision to reject his claim for FAS.

Bucci asked the AAT to review the decisions of the SSAT.

Family allowance supplement

Section 73(1) of the *Social Security Act* provides that a person is qualified to receive FAS for a child, if the person and the child are in Australia, the person is receiving family allowance for the child and the person is not receiving another form of income support under the *Social Security Act*, including invalid pension.

The AAT said that, as Bucci was receiving an invalid pension, he was not qualified to receive FAS for his children. Even if he were not receiving invalid pension, he could not qualify for FAS as his children were not present in Australia.

Rate of invalid pension

Section 33(4) of the *Social Security Act* provides for the payment of additional invalid pension to a pensioner who has a dependent child, a term which is defined in s.3(1) to mean, *inter alia*, a child under 16 years in the person's custody, care and control.

However, s.3(10) provides that a child is not to be treated as a dependent child in relation to a person for the purposes of, *inter alia*, invalid pension, unless -

> '(a) the child is an Australian resident;
> (b) the child is living with the person while the person is an Australian resident;
> (c) the child had been an Australian resident and is living with the person outside Australia; or
> (d) the child had been living with the person in Australia and is living with the person outside Australia.'

The AAT said that there was no evidence on which it could be satisfied that Bucci had the custody, care and control of his children; but, even if this were so, s.3(10) prevented an increase in the rate of invalid pension for pensioners in Bucci's circumstances where his children were living overseas in the care of his wife.

A claim for family allowance?

The Tribunal then considered the question whether Bucci's claim for FAS could be treated as a claim for family allowance, under the provisions of s.159(5). This provision allows the Secretary to treat a claim for one type of payment under the *Social Security Act* as a claim for another payment that is 'similar in character'.

The AAT said that it was satisfied that Bucci was not qualified to receive family allowance, because his children were not his 'dependent children' as that term is used in the *Social Security Act*, as required by s.82(1) of the Act.

Reciprocal agreement

Finally, the AAT referred to the agreement between Australia and Italy, set out in Schedule 2 of the *Social Security Act*. The AAT observed that Article 4 of the Agreement gave Bucci, an Australian citizen, the right to be treated equally to an Italian citizen under the social security laws of Italy; but suggested that this was likely to be of little assistance to him. The AAT concluded with the observation that Bucci was -

> 'In unfortunate circumstances, being only entitled under the Act, to a pension payable at the single rate with which to provide for himself, his wife and 3 of his 4 children. Despite the Agreement between Australia and Italy, the Act does not help those breadwinners who live in Australia while maintaining their families who have never resided in this country, in Italy.'

(Reasons, para. 13)

Formal decision

The AAT affirmed the decision under review.

[P.H.]

Invalid pension: permanent physical or mental impairment

RADOVANOVIC and SECRETARY TO DSS (No. 5786)
Decided: 22 March 1990 by H.E. Hallowes, G. Brewer and L. Rodopoulos.

When invalid pension was granted to Radovanovic, the relevant legislative provisions were s.23 and 24 of the *Social Security Act*. At the date of decision to cancel, s.27 and 28 applied. The Tribunal *set aside* the decision to cancel the pension.

The facts

Radovanovic was born in Yugoslavia and had 4 years of schooling before working in a tyre factory. He came to Australia in 1972 and worked in various labouring jobs including the assembly line at Ford.

When he was unable to keep up with other employees at Ford, he was moved

to cleaning duties. In October 1984, he injured his back at work.

He claimed invalid pension in August 1985 and his doctor reported anxiety, depression, insomnia and chronic low back pain. X-rays showed minimal spondylosis at L3-4 level. A Commonwealth Medical Officer assessed the impairment, 'anxiety depressive neurosis', as moderate and temporary. But, following reports from other doctors and a social worker, invalid pension was granted with a review in 2 years' time.

The review took place after the repeal of s.23 and the substitution of s.27 in the *Social Security Act*.

Findings

The Tribunal found that Radovanovic's capacity for work receded when Ford put him on cleaning duties; and that his confidence in his ability to work was further undermined when he suffered an injury to his back, for which he received 'more than a token payment of worker's compensation'. The back condition cost him the ability to do the only type of work with which he was familiar.

The objective evidence of his back condition was not impressive, the AAT said, and in another person may have led to a demand for rehabilitation and development of new skills. Were it a matter of his back condition alone, the Tribunal said, it would not be persuaded that he is qualified for invalid pension.

However, it was his general practitioner's and his treating psychiatrist's opinion that he had a psychiatric illness; and he also had a contracture of a finger on his left hand, which would inhibit work requiring manipulative skills.

His perception of himself as an invalid had become so entrenched and ineradicable as to itself constitute a psychiatric condition which, together with his physical problems, had destroyed his capacity for work.

Ability to attract an employer

Applying the steps in *Panke* (1981) 2 *SSR* 9, the Tribunal found Radovanovic had a physical and mental impairment which limited his capacity to sustain his work effort throughout a normal working week. He had lost motivation to work and had been out of work for a number of years.

He no longer presented to an employer as a young man and, although he had another 10 years before reaching retirement age, he had reached an age where he would be disregarded as a potential employee because of his age. This, and his compensation history and lack of work skills, his limited education and lack of English, satisfied the Tribunal that he did not have an ability to attract an employer to engage him in work suitable for him. The fact that English was not his first language had not inhibited his capacity to attract an employer in the past but, together with his lack of educational qualifications, it had markedly reduced his job opportunities. He therefore satisfied s.27(a): he was incapacitated for work to the extent of at least 85%; and these factors were permanent.

The Tribunal then considered s.27(b) and decided that at least 50% of his permanent incapacity was directly caused by his physical and mental impairment at the date when invalid pension was cancelled. His lack of motivation was a component of his psychiatric illness and thus part of his mental impairment. Any lack of desire to return to work because of his back was directly referable to his physical impairment. For those with formal educational qualifications, a contracture of the non-dominant hand might not inhibit availability of employment but the Tribunal was satisfied it did so in Radovanovic's case.

Formal decision

The AAT set aside the decision under review and remitted the matter to the Secretary for reconsideration with the direction that Radovanovic had been permanently incapacitated for work, within s.27 of the *Social Security Act*, since the cancellation of his invalid pension.

[B.W.]

Special benefit: caring for foster children

RUEDIGER and SECRETARY TO DSS
(No. 5820)
Decided: 12 April 1990 by J.A. Kiosoglous.

Melva Ruediger, a single woman who was 46 years old at the time of this decision, had worked for many years in hospitals and children's homes. In 1983, she completed an Associate Diploma in Social Work while working for the South Australian Department of Community Welfare (DCW).

In December 1983, the Catholic Family Welfare (CFW) approved her as a foster-care mother and placed two children in her care.

In January 1984, Ruediger applied to the DSS for special benefit, which was paid to her until the DSS decided to cancel the benefit in January 1988.

Ruediger asked the AAT to review that decision.

The legislation

Section 129(1) of the *Social Security Act* gives the Secretary a discretion to grant a special benefit to a person if the Secretary is satisfied that the person 'is unable to earn a sufficient livelihood'.

The evidence

Ruediger had been a foster-parent since December 1983. Various children had been placed in her care, by CFW and DCW and other organisations, who had paid her some money to cover basic living expenses for the children but no money for her own living expenses. Since the cancellation of her special benefit at the beginning of 1988, Ruediger had continued to care for 2 children. Her care responsibilities prevented her from obtaining employment and her income was limited to about $56 a week.

The DSS had reviewed Ruediger's eligibility for special benefit on several occasions between 1984 and 1988 because there was some doubt about her eligibility. In September 1987, the DSS decided that special benefit should not have been paid to Ruediger but, because cancellation would have had an adverse effect on the children in her care, the payment should continue until the last of the children in her care in December 1985 had turned 16. A letter was written to Ruediger in these terms.

Despite the terms of that letter (which would have led Ruediger to understand that special benefit would continue until September 1991), the DSS made its cancellation decision in December 1987. The last of the children in Ruediger's care in December 1985 left her in July 1988.

The Tribunal's decision

The AAT accepted that Ruediger's activities were of considerable value to the children in her care; that the moneys she received did not cover the cost of caring for the children; that, since cancellation of her special benefit, Ruediger had continued to accept children into her care at considerable personal cost; and that her care for the children made it impossible for her to undertake paid employment.