Administrative Appeals Tribunal decisions

Jurisdiction of SSAT: decision under review

SECRETARY to DSS and BRANCH (No: N90/428)
Decided: 12 November 1990 by J. Handley.

The DSS asked the AAT to review a decision of the SSAT affirming a decision not to grant Branch special benefit but varying a decision regarding her eligibility for unemployment benefit.

Branch resigned from her employment on 1 March 1989 to contest a seat in the Federal election on 24 March 1989. She lodged a claim for unemployment benefit on 6 March for the period 20 February to 5 March. She did not claim unemployment benefit for the period after 5 March as she did not consider that she would qualify, having regard to the work test as she was not available for work. However, she lodged a claim for special benefit on 6 March.

The DSS responded by cancelling her unemployment benefit from 6 March (though Branch had not claimed for any date after 5 March). On 20 March, the DSS refused her claim for special benefit and she applied to the SSAT on 27 March, asking them to review the decision relating to special benefit.

The SSAT affirmed the decision to reject the claim for special benefit but decided that Branch was eligible for unemployment benefit, although she had not lodged a claim for that benefit.

The decision under review

The AAT noted that, neither in her written application nor on any written document in the SSAT file, had Branch sought review of the decision concerning unemployment benefit. Although the decision of 20 March contained reference to the fact that she was ineligible for unemployment benefit, the AAT noted that this was only because it was a necessary aspect of entitlement to special benefit under s.129 of the *Social Security Act*.

The AAT considered the meaning of 'decision', as used in the *AAT Act* and concluded that the note in the 20 March letter referring to Branch's eligibility for unemployment benefit was merely a comment or opinion and not a 'decision' for the purposes of enabling the SSAT to review the unemployment benefit matter.

This view was reinforced by the fact that the DSS statement of reasons referred only to special benefit and the SSAT itself had described the decision under review as a decision concerning special benefit.

Jurisdiction of the SSAT

The AAT concluded that the SSAT had erred when it purported to set aside and/or vary the decision concerning unemployment benefit.

After the special benefit matter was considered, the SSAT was *functus officio* and, accordingly, the SSAT did not have jurisdiction to consider her entitlement to unemployment benefit since the only decision under review was the refusal to pay special benefit.

The decision

The AAT set aside the decision purportedly made by the SSAT on 10 April 1990.

[R.G.]

Review by DSS: date of effect

NEVILLE and SECRETARY TO DSS (No. S90/47)
Decided: 19 December 1990 by J.A. Kiosoglous.

Richard and Gladys Neville appealed to the AAT against an SSAT decision which had varied a DSS decision and decided that payment of arrears of single age pension for each applicant should be backdated to 1 August 1989, rather than 17 August 1989.

Richard Neville, born in 1899, and Gladys Neville, born in 1896, married in 1938. On 22 July 1965 they were both granted age pension, at the married rate. On 16 August 1985, Mr Neville notified the Department that both he and Mrs Neville had moved into the Walkerville Nursing Home. The DSS then wrote to each applicant advising them that their pension would increase due to their change in circumstance.

In August and October 1985, Mr and Mrs Neville applied for supplementary assistance. The AAT was unable to determine the outcome of these applications. The DSS, the applicants and the applicants' daughter, Mrs Trestrail, had various communications about changes in circumstances affecting pension rates over the years, the earliest dated 25 November 1985.

The significance of eating

In July 1989, the Nevilles' daughter wrote to the director of the Elderly Citizens Homes of SA, querying why her parents were being charged 100% of the married rate of pension plus rent allowance, together with an extra $3.40 each per fortnight, for accommodation; the Homes' quoted charges described a rate of 85% of the single rate of pension, plus rent allowance. He told Mrs Trestrail that their quoted rates were accurate and the Nevilles were not receiving their legal entitlement of two single rates of age pension.

The director followed up the Nevilles' entitlement with various DSS regional offices and members of Parliament. He ascertained that the crucial issue was whether Mr and Mrs Neville took their meals in a communal dining room. After a letter to the Minister, Brian Howe, containing the information that the Nevilles dined in a communal dining room, their pensions were increased from 17 August 1989, the first payday after the DSS received the advice, from $230.40 to $288.40 a fortnight.

Mrs Trestrail then investigated the possibility of arrears and on 29 August a DSS review officer affirmed that arrears would not be backdated to 1985.

The legislation

Section 33 provides that the single rate of pension can be paid where a married couple's living expenses are, or are likely to be, greater than they would otherwise be because they are unable to live together in a matrimonial home due to illness or infirmity and this inability is likely to continue indefinitely.

Section 168 determines the date of effect of a decision to increase the rate of a pension.

Section 168(4)(c) provides that where a determination is made to increase the rate of pension following a person advising of a change in circumstances, the determination takes effect from the date of the advice or the change in circumstances, whichever is the later.

Section 168(4)(d) provides that if none of the previous paragraphs apply