

cards in their own name, though settlement of those bills was usually made out of the joint banking account. As the AAT noted: 'There could not be a closer or more significant pooling of their financial resources': Reasons, para. 7.

#### The AAT's reasoning

The AAT noted, applying the Federal Court's propositions in *Lambe* (1981) 4 SSR 43, that in deciding whether a marriage-like relationship exists, 'all facets of the inter-personal relationship' must be taken into account.

Commenting first on its own perception of the relationship, the AAT noted that Gray and Ms M did not consider themselves to be in a marriage-like relationship. However, after noting that they were 'upright, truthful people', the AAT did not find their own perception of the situation determinative, commenting that they appeared to be 'under a misapprehension as to the legal nature of the relationship between them. Almost all the objective indicia point to such a lasting and almost total exclusive commitment to each other, that the statutory tests are amply fulfilled': Reasons, para. 14.

The AAT suggested that the relationship between Gray and Ms M 'is closer and more stable, more imbued with complete trust and more satisfying than many marriages'. The AAT concluded that it was bound to find the existence of a marriage-like relationship because of the terms of the statute and the many binding decisions of courts.

#### Formal decision

The AAT affirmed the decision under review.

[R.G.]

## Sickness benefit: temporary incapacity

CONLON and SECRETARY TO  
DSS

(No. 8133)

**Decided:** 31 July 1992 by J.A. Kiosoglous, D.J. Trowse and R.E. Elsmie.

Conlon had been receiving sickness benefit since July 1989. In May 1991, the DSS decided to cancel Conlon's

benefit on the basis of a Commonwealth Medical Officer's opinion that he did not have a disability warranting continuation of sickness benefit.

The SSAT affirmed this decision because Conlon's conditions were permanent and not temporary. Conlon applied to the AAT, relying upon the Commonwealth Medical Officer's opinion that his condition was 'improving and temporary'.

#### The legislation

One of the qualifying conditions for sickness benefit under s. 117(1) of the *Social Security Act 1947* was that the person 'was incapacitated for work by reason of sickness or accident (being an incapacity of a temporary nature)'.

#### Tests applied

The AAT adopted the 'global' approach used by the AAT in *Shearim* (1984) 20 SSR 217 of simply asking 'was the applicant for any period prior to the date of cancellation temporarily incapacitated for work by sickness or accident?' and focusing on whether the applicant 'fell within the total parameters or [*sic*] entitlement to Sickness Benefit, a benefit intended for those suffering short-term loss of income because they are too sick or injured to work but who can be expected to recover': Reasons, para. 12.

The following test of permanency from the Full Federal Court in *McDonald* (1984) 11 SSR 114 (an invalid pension case) was also applied:

'the true test of a permanent, as distinct from temporary, incapacity is whether in the light of the available evidence, it is more likely than not that the incapacity will persist in the foreseeable future.'

(Reasons, para. 12)

#### Applicant's conditions permanent

Two of the 4 medical conditions suffered by Conlon, scoliosis and chronic obstructive airways disease, were regarded by the AAT as having little or no bearing on his capacity for work.

However, his other conditions, back-ache and anxiety and stress, were regarded as more likely than not to persist in the foreseeable future. They were, accordingly, permanent because they were very long-standing (at least 10 years) and were unresponsive to treatment. In coming to this conclusion, the AAT preferred the other medical evidence over the Commonwealth Medical Officer's opinion upon which Conlon had relied.

The AAT noted that Conlon

acknowledged that he had some capacity for work but also encouraged him to apply for disability support pension

#### Formal decision

The AAT affirmed the decision under review.

[D.M.]

## Invalid pension: Incapacity for work

ANTIC and SECRETARY TO DSS

(No. 8290)

**Decided:** 2 October 1992 by R.A. Balmford, R.C. Gillham and L.S. Rodopoulos.

Vera Antic claimed invalid pension on 7 December 1990 and this was rejected by the DSS on 24 January 1991 and affirmed by the SSAT on 9 September 1991. (Antic had originally claimed invalid pension on 23 January 1987 and the AAT affirmed the rejection of that claim on 17 March 1989.) That decision was made on the basis of ss.23 and 24 of the *Social Security Act 1947* as they stood at the date of the claim. The present claim was decided on the basis of ss.27 and 28 of the *Social Security Act 1947*.

#### The facts

Antic was born in Yugoslavia in 1938 and came to Australia in 1974. She worked in factories until 1976, when she attended hospital with a 'sensitivity rash to quinine tablets', which had been prescribed for cramps. She was treated and the rash settled. She had neither worked nor looked for work since then. She divorced in 1987 and lived with her daughter who was an invalid pensioner.

Antic claimed attacks of shaking, a choking feeling and stiffness in her hips and legs. An orthopaedic surgeon diagnosed a disc prolapse causing low back pain and right sciatica and found her to be unfit for any work involving bending and lifting. Her treating psychiatrist diagnosed anxiety-depression with inadequate functioning and lack of confidence.

The AAT preferred evidence called by the DSS from Dr Minas to that of the treating doctor 'because of his recognised expertise in the field of tran-