behaviour resulting from his injury, and therefore formed part of his 'physical, intellectual or psychiatric impairment'.

Work

The AAT consulted a dictionary to establish the meaning of 'usual' work. 'Usual' was taken to mean 'commonly observed or practised, current, prevalent; of persons: commonly employed or serving in a particular capacity'. The AAT found that Chami's usual work was that of a labourer, that being the work in which he was commonly employed. He was unable to perform his usual work because of his impairment.

He was found to be 'currently skilled' for a variety of jobs that he had in fact never performed, such as storeman, guard and liftman. He could not perform those jobs nor undertake a course of educational or vocational training unless he could first successfully complete a rehabilitation program designed to overcome his abnormal illness behaviour. Since his inability to conclude a rehabilitation program resulted from his impairment, it followed that he was prevented by the impairment itself from undertaking work for which he was 'currently skilled' and from undertaking educational or vocational training in the next two years.

The AAT rejected an argument advanced by the DSS, referring to *Drake and the Minister for Immigration and Ethnic Affairs* (No 20 (1979) 2 ALD 634, that the Tribunal should be wary of departing from government policy. That statement did not refer to the application of provisions such as s.94 which set out specific statutory criteria for a person to qualify for a pension. Also, there was no statement of government policy concerning s.94 in any of the parliamentary papers accompanying the passage of the Act.

The decision

The AAT set aside the decision under review and determined that Chami continued to be eligible for payment of disability support pension on and from the date of cancellation.

[P. O'C.]

Marriage-like relationship: a different approach to older people

NEEDER and SECRETARY TO DSS

(No. 8648)

Decided: 6 April 1993 by D.W. Muller.

Miss Needer (aged 61 years) sought review of an SSAT decision that she had been living in a 'marriage-like relationship' with Mr H (aged 53 years).

The legislation

Section 4(3) of the *Social Security Act* 1991 sets out criteria which a decision-maker 'is to have regard to' when deciding whether two people are living in a 'marriage-like relationship'. These are in five groups: financial aspects, nature of the household, social aspects, sexual relationship and commitment to each other.

Facts

N and H had been living in the same residence for ten years, initially in a rented flat with another man and since 1985 in a jointly owned house. They had purchased the house and a car in joint names because they were better able to get finance jointly than individually. They also purchased another house which was rented to N's invalid son, who it was anticipated would take over the loan with which they bought it. Apart from these purchases and loans they did not pool financial resources.

N and H were found to be good friends who lived fairly separate lives apart from sometimes engaging in joint social activities and holidays. Their initial casual sexual relationship had 'fizzled out'.

Not a marriage-like relationship

Before proceeding to analyse the relationship in terms of the s.4(3) criteria, the AAT made the following interesting comments:

> 'Both of these people have lived in marriage situations before they met and they were at pains to point out that their current situation is nothing like their previous lives with their respective spouses. I accept that there is a difference and I also accept that the difference is hard to define. I believe that the criteria set out [in s.4(3)] are more appropriately applied to younger couples. It seems to me that when single people are in their mid to late fifties and beyond they are looking for security, companionship and living accommodation which they will be able to afford for the years ahead of them. They avoid, if they can, mingling their finances, pooling their resources (other than in obtaining accommodation), and consulting each other on a day to day basis about everyday affairs. They wish to be independent so far as they are able.'

(Reasons, para. 6)

The AAT regarded a '"tick-list" approach to these cases' as inappropriate but thought that such an approach to the s.4(3) criteria would probably have led to a decision that N and H were not living in a marriage-like relationship anyway. The AAT decided their relationship was one of good friends who were quite independent of each other.

Formal decision

The AAT set aside the SSAT's decision and decided that N was not living in a marriage-like relationship with H.

[D.M.]

Overpayment of sole parent's pension: appeal after conviction

ANDERSON and SECRETARY TO DSS

(No. 8261A)

Decided: 4 June 1993 by P.W. Johnston, S.D. Hotop and R.D. Sayle.

Anderson was granted sole parent pension from 12 May 1987. After forming an opinion that Anderson had 'reconciled' with her husband, the DSS decided to cancel her sole parent pension and to recover from her an overpayment. Following internal review, the Authorised Review Officer (ARO) affirmed the decision to cancel, and decided that the overpayment period was from 12 April 1990 to 2 August 1990. The amount of the overpayment to be recovered was $4172.90.

On 17 September 1991 Anderson was convicted, in the Midland Court of Petty Sessions, of eight offences of