

that each child did require substantially more care and attention than a child of the same age without disability, and that this need for care and attention would continue for an extended period.

Formal decision

The AAT affirmed the SSAT decision that CDA was to be paid for both children.

[B.M.]

Child disability allowance: provisional commencement day

DOWD and SECRETARY TO DSS

(No. 9236)

Decided: 7 January 1994 by B.G. Gibbs, R.C. Gillham and E.A. Shanahan.

Dowd claimed that she was entitled to back payments of child disability allowance in respect of her son. Her claim was that she should have received the payment from 26 February 1986.

Previous claims rejected

Handicapped child's allowance had first been claimed by Dowd on 26 February 1987. This claim was rejected on the basis that her son was not a handicapped child. Subsequent claims for child disability allowance on 2 February 1989 and 23 May 1991 were also rejected on the ground that her son did not need substantially more care and attention because of his disability than that required by a young person of the same age who does not have a disability.

Dowd claimed the allowance once again on 6 October 1992. This claim was also rejected, so she appealed to the SSAT. On 15 April 1993 the SSAT decided that she was eligible for child disability allowance and had been qualified to receive the payment since 1986. The SSAT therefore backdated the payment 12 months prior to the most recent claim, viz. 6 October 1992. This meant that Dowd would receive the payment from 6 October 1991.

What was the correct commencement date?

As the SSAT had decided that she was

qualified from 1986 Dowd asked the AAT to review the SSAT decision that she was only entitled to payment from October 1991. Her submission was that s.960 of the *Social Security Act 1991* provided that payment is to occur from the provisional commencement day. Section 958(1) states that the date on which the person made the claim for the allowance is their provisional commencement day. But where a previous claim has been made for a similar payment then the date is determined under s.958(2)(a)(ii) of the Act. This section states:

'If

(a) a person makes a claim (in this subsection called the "initial claim") for:

...

(ii) a pension, allowance, benefit or other payment under another Act, or under a program administered by the Commonwealth, that is similar in character to child disability allowance;

the person's provisional commencement day is the day on which the person made the initial claim.'

Section 960 of the Act further provides that where a person is qualified for child disability allowance and the provisional commencement day is more than 12 months after the person became qualified to receive the payment then the allowance can be backdated by 12 months.

Dowd claimed that the object of these provisions was to provide for arrears where the person had been unsuccessful in seeking to obtain the payment even though she was qualified.

But the Tribunal could not agree with her claim for back payment to 1986. The Tribunal said:

'While we agree that statutes should be construed in a manner to carry out the intention of the legislature, the paramount rule remains that every statute is to be interpreted according to its manifest and expressed intention . . . Accordingly, we find that while pursuant to subsection 958(1) a person's provisional commencement day will be the day on which the claim for CDA is made, the manifest and expressed intention of subsection 958(2) is to be of ameliorative effect. That is to say, where a person makes a claim of the type provided for in that subsection (called the initial claim) rather than for CDA then, subject to certain criteria being met, the person's provisional commencement day for CDA is the day on which the person made the initial claim.'

(Reasons, pp.5-6)

The criteria are: that the person was qualified for the allowance on the date of the initial claim; that a subsequent

claim for CDA is made; and that the Secretary is satisfied that it is reasonable for s.958(2) to apply to the person.

The AAT pointed out that Dowd's claim on 26 February for handicapped child's allowance was rejected. As a result she could not satisfy the first of the above criteria which required her to be qualified for CDA on the date of the initial claim. Thus she could not claim the back payment under s.958(2).

The Tribunal also concluded that the later claims for CDA in February 1989 and 1991 were not claims of the type provided for under s.958(2). This was a further reason why she could not avail herself of the ameliorative provisions under that subsection.

Formal decision

The AAT affirmed the decision under review and affirmed the applicant's provisional commencement date as 6 October 1992 and that payment was to be backdated by 12 months to 6 October 1991.

[B.S.]

Overpayment: prepayment of benefit

SECRETARY TO DSS and

AKHNOUKH

(No. 9319)

Decided: 23 February 1994 by J.R. Dwyer.

The DSS sought review of a decision of the SSAT made on 24 November 1992 that set aside a decision of the DSS to raise and recover an overpayment of job search allowance paid to Akhnoukh for the period 16 December 1991 to 26 December 1991. The SSAT had decided that there was no debt owing.

It was not disputed that Anhoukh was receiving job search allowance (JSA) when, on 16 December 1991, he commenced full-time temporary employment. He was due to complete his next fortnightly application for continuation of benefits on 26 December, but as that date was a public holiday, his next payment of JSA was prepaid under s.569 of the *Social Security Act 1991* on 23 December. On 7 January 1992 Anhoukh lodged his form, disclosing that he had commenced employment.