

may act on the information to cancel payments.

The AAT distinguished the present case from four earlier AAT decisions cited by counsel for Prior. In *Doravelu*, (1992) 67 SSR 961, *Eisen* (1993) 76 SSR 1102 and *Carruthers* (1993) 76 SSR 1100 the AAT had held that there had been no valid recipient notification notice and that there was no proper basis for cancellation, but in each of these cases the recipient was otherwise qualified for the payment. In *Gellin* (1993) 76 SSR 1101 the cancellation after six months absence from Australia was mechanical and not discretionary, and was not affected by the giving of a valid notice.

The AAT found, without further discussion, that there were no grounds for the debt to be waived or written off.

#### Formal decision

The AAT set aside the decision under review and determined that the sum of \$1127.20 received by Prior was a debt due to the Commonwealth, and the debt was not to be waived or written off.

[P.O'C.]

## Disability support pension: continuing inability to work

**BUTTON and SECRETARY TO DSS**

(No.9148)

**Decided:** 30 November 1993 by W.J.F. Purcell, J.T.B. Linn and D.J. Trowse.

Button, aged 49 had served in the Royal Australian Airforce for 12 years as a maintenance engineer and a maintenance fitter. He received a disability pension from the Department of Veterans Affairs for problems with his neck, back and shoulders. He had completed an equivalent to matriculation and had been responsible for the training of other personnel.

After being discharged in 1976, he undertook various jobs before starting his own business in 1981. As his neck and shoulder problems gradually deteriorated, he ceased any 'hands on' work which came to be undertaken by other staff. Due to financial difficulties, the

company went into liquidation in September 1991.

Button applied for a disability support pension (DSP) on 8 September 1992. His claim was rejected on the grounds that he could be retrained and equipped with light skilled or unskilled duties within 2 years. This decision was affirmed by the SSAT. Button appealed to the AAT.

#### Legislation

Section 94(1) requires that to qualify for a DSP as well as other requirements, a person must have a continuing inability to work: s.94(1)(c).

The concept of continuing inability to work is amplified by s. 94(2). To meet the requirement, a person's impairment must:

- prevent the person from doing their usual work and work for which they are currently skilled: s.94(2)(a); and
- prevent a person from undertaking educational or vocational training during the next 2 years which would be likely to equip the person within the next 2 years to do work for which the person is currently unskilled: s.94(2)(b).

Educational or vocational training is defined in s.94(5) as not including a program designed specifically for people with physical, intellectual or or psychiatric impairments.

#### Impairment

The DSS did not dispute that Button had an impairment of more than 20% under the Impairment Tables referred to in s.94(1) of the Act.

#### Continuing inability to work

The DSS contended that Button did not have a continuing inability to work as he was able to do work for which he was currently skilled and, in addition, his impairment did not prevent him from undertaking educational or vocational training as required by s.94(2)(b).

At the time of the AAT hearing Button was undertaking a 12 week 'back care and office duties' course run by TAFE which was designed specifically for people with back problems. The AAT found that this was not educational or vocational training. It was expressly excluded by s.94(5) as it was designed specifically for people with a physical impairment.

Mr Buitenhuis, a disability job seeker adviser gave evidence that he met with Button on 30 April 1993. He was of the opinion that Button could be trained as an instructor given his extensive experience as a tradesperson. Mr

Buitenhuis believed that Button could be equipped with new skills within 12 months of commencement of an educational or vocational course.

The AAT found that Button's impairment did not prevent him from undertaking training which would equip him within the next 2 years to do work for which he was currently unskilled. The AAT noted that Button was an articulate and highly skilled tradesperson who had skills and potential to offer the workplace. The AAT found that Button did not satisfy the requirements of s.94(1)(c).

#### Formal decision

The AAT affirmed the decision of the SSAT. Button was not eligible to receive a DSP.

[H.B.]

## Disability support pension: 'severely disabled'

**SECRETARY TO DSS and TSAKRIOS**

(No. 9313)

**Decided:** 18 February 1994 by D.W.Muller.

The DSS asked the AAT to review a decision of the SSAT that Tsakrios was 'severely disabled' for the purposes of s.23(4B)(a) of the *Social Security Act 1991*. If Tsakrios was held to be severely disabled then she would be able to receive disability support pension after 12 months absence from Australia. The evidence suggested that Tsakrios had returned to Greece permanently.

#### The legislation

The relevant part of s.23(4B)(a) provides that a person is 'severely disabled' if:

'a physical impairment, a psychiatric impairment, an intellectual impairment, or 2 or all of such impairments, of the person make the person, without taking into account any other factor, totally unable:

- (i) to work for at least the next 2 years; and
- (ii) unable to benefit within the next 2 years from participation in a program of assistance or a rehabilitation program ...'