

Payment of rent

A further qualifying condition for payment of rent assistance is that the person pays, or is liable to pay, rent: s.1066-D1(b). The evidence was inconclusive as to whether Reyes had in fact paid rent since the registered agreement, but he could qualify on the alternate ground that he was liable to pay rent under the terms of the registered agreement.

Formal decision

The AAT set aside the decision and substituted a decision that the applicant qualified for rent assistance from 10 December 1992.

[P.O'C.]

Disability support pension: cancellation

PALIOGIANNIS and SECRETARY TO DSS

(No. 9091)

Decided: 1 November 1993 by J.R. Dwyer, D.L. Elsum and B.H. Pascoe.

Mr Paliogiannis had been granted an invalid pension in May 1988. After disability support pension (DSP) was introduced in November 1991, Mr Paliogiannis' entitlement was reviewed and DSS decided to cancel his pension. P asked the AAT to review the decision which had been affirmed by the SSAT.

The issues

The two issues in this case were:

- whether P had a continuing inability to work as defined in s.94(2); and
- whether the principles in *McDonald v Director-General of Social Security* (1984) 18 SSR 188 relating to the cancellation of invalid pension are applicable across the change to DSP.

The DSS's concession that P had an impairment of 20% under the Impairment Tables was accepted, with reservations, by the AAT.

Continuing inability to work

This issue required consideration of whether P's impairment was of itself sufficient to prevent him doing his usual work; and work for which he was currently skilled for at least two years (s.94(2)). To decide the question the AAT said it needed to know: what P's impairment was; how it affected his

work capacity; what his usual work was; and for what work he was currently skilled.

The AAT was satisfied that P had limited movement of his neck and back but, due to matters being unresolved by evidence, found it impossible to state definitively what impairments P suffered from as it seemed possible there might also be impairments from joint pain, problems with his hands, possible organic brain damage and psychological, intellectual and psychiatric matters.

The AAT stated that without first knowing the extent of the impairment it was not possible to decide the effects of the impairment, but was able to say that he was unable to do heavy lifting and lacked the mental skills to work as a ticket seller or mail sorter. As P was aged 55, the AAT was able to consider whether educational or vocational training was likely to equip him to do work having regard to the likely availability of work in his locally accessible labour market (s.94(4)) and decided it was not.

On the evidence of his work history, which included work for friends which had not been on a full-time basis since the 1970s, the AAT was not satisfied that P ever worked for award wages for more than 30 hours a week (s.94(5)), and could not make findings concerning his usual work. It found that the only work for which he may have been currently skilled was as a presser and his neck and back impairments prevented him doing that work.

Application of McDonald's case

The AAT referred to cl.33 of Schedule 1A of the *Social Security Act* 1991 in rejecting the DSS submission that because there were significant differences between the qualifications for invalid pension and DSP it could not be assumed that a person who was granted invalid pension qualifies for DSP. Clause 33, a transitional provision, stated that if a determination granting a claim for invalid pension was in force immediately before 12 November 1991, the determination has effect from 12 November 1991 as if it were a determination granting a claim for DSP. P had been in receipt of DSP since 12 November 1991 so *McDonald* applied. The AAT stated that s.146 of the 1991 Act, like s.46 of the *Social Security Act* 1947 considered by the Federal Court in *McDonald*, makes it clear that DSP is only to be cancelled (under that section) if the Secretary is satisfied that it is being paid to a person to whom it is not payable. As the evidence in this

case left the AAT unsatisfied on many points, it could not be satisfied that DSP was not payable to P, particularly if the evidence raised a real possibility that there might be other relevant conditions which have not yet been fully investigated.

Formal decision

The decision under review was set aside and the matter remitted to the Secretary for reconsideration in accordance with the direction that P continued to be entitled to payment of DSP.

[B.W.]

Disability support pension: continuing inability to work

GRIGORIAN and SECRETARY TO DSS

(No. 9194)

Decided: 20 December 1993 by G. Ettinger, H.D. Browne, and D.D. Coffey.

Grigorian sought review of the SSAT decision cancelling payment of the disability support pension (DSP) to Grigorian.

The legislation

Section 94(1) sets out the qualifications for DSP as:

'A person is qualified for disability support pension if:

- (a) the person has a physical, intellectual or psychiatric impairment; and
- (b) the person's impairment is 20% or more under the Impairment Tables; and
- (c) the person has a continuing inability to work ...'

The facts

Grigorian was born in Iran in 1941. He attended a tertiary college for Armenian studies and then worked as a teacher. He migrated to Australia in 1971 and worked for 16 years as a storeman and cleaner and occasionally as a part-time salesman. In 1985 Grigorian was injured at work. His injury affected his neck, back and arms. He eventually lost his job when his employer went into liquidation.

Grigorian applied for and was granted the invalid pension in 1990. In June 1992 he applied to the DSS for his pension to be paid overseas for a short period. The DSS then reviewed his