

Administrative Appeals Tribunal decisions

Jurisdiction to reopen a case and vary an AAT decision

JAMES and SECRETARY TO DSS (No. 9517)

Decided: 2 June 1994 by D.W.Muller, G.S.Urquart and A.M.Brennan.

The facts

The facts of this application lie in its history. Mr James was granted sickness benefit from 19 June 1979. He applied for an invalid pension on 6 October 1981 and was granted on and from 10 August 1983. (It appears that the delay in grant occurred because he refused to sign a release of hospital records of treatment he had received.)

On 3 February 1987 James was awarded workers' compensation of \$48,080. for the period 19 June 1979 to 9 April 1985. The DSS decided that James should refund the total amount of sickness he was paid, \$23,233. Under the provisions of the *Social Security Act 1947* invalid pension payments were not refundable, so that if James had been granted an invalid pension from an earlier date, a lesser sum would have been repayable.

Background

James applied to the SSAT which decided, on 11 November 1987, that there were no special circumstances to warrant waiver of the right of the Commonwealth to recovery of the debt. James then sought a review of that decision by the AAT.

On 7 October 1988 Deputy President Breen decided that there were special circumstances in James' case to warrant relieving James of the liability to repay the amount of sickness benefit paid to him from October 1981, the date that the DSS initially refused his claim for an invalid pension. James received a refund of \$9,279.

James reapplied to the SSAT on 2 November 1990 claiming that he should not have any sickness benefit payments deducted from his workers' compensation. The SSAT told him that it had no jurisdiction to review the matter because there had been a determination made by the AAT. On 30 January 1991 he lodged another application to the SSAT and was again

told that the SSAT could not review the same decision.

James reapplied to the SSAT on 5 March 1993. The SSAT heard the matter and decided, on 7 October 1993, that it did not have jurisdiction to review the application in respect of recovery of sickness benefits, nor did it have jurisdiction to review the application in respect of the date of commencement of invalid pension.

On 14 October 1993 James applied to the AAT for review of the SSAT decision. Counsel for James submitted that the claim for sickness benefit made in 1979 should now be treated as a claim for invalid pension; that James would have qualified for invalid pension in June 1979 if his medical problems had been correctly diagnosed; that the AAT should award the invalid pension retrospectively to 19 June 1979 with the effect that the DSS would have to refund the balance of the amount it recovered; and these were not matters that were adjudicated on by D.P.Breen in 1988.

Could the AAT re-open its previous decision?

The AAT rejected the submissions for James, stating that, in its view, the submissions amounted to an attempt to re-open the case for special circumstances put to D.P. Breen by putting new evidence of special circumstances before the Tribunal. It stated that this could not be done because:

- a tribunal or a court cannot re-open a case in which a final judgment or decision had been made. This has to be done by way of appeal to the next court above in the hierarchy of courts or tribunals.
- the AAT cannot review a decision of the AAT.

The AAT added that even if the AAT were able to do so, it would not have allowed James to re-open his case nor exercised any discretion in his favour because:

- James had received a double benefit that he would not be entitled to receive under the present legislation;
- he had refused to allow the DSS's doctors to see the records of his treating doctors; and
- he had not applied for invalid pension until 6 October 1981.

The AAT stated that the SSAT was correct in deciding that it had no jurisdiction to deal with the matter.

Formal decision

1. The AAT affirmed the decision of the SSAT of 8 October 1993 that it did not have jurisdiction to vary a decision of the AAT.
2. It rejected the application to re-open James' case.
3. It had no jurisdiction to review a decision of the AAT.

[B.W.]

Application for reinstatement

MANOLI and SECRETARY TO DSS

(No. 9505)

Decided: 9 May 1994 by H. Hallowes.

Manoli applied to the AAT in July 1993 for review of an SSAT decision of June 1993 affirming a decision of an authorised review officer (ARO) that he was not qualified for disability support pension (DSP) under s.94 of the Act.

Manoli was sent a notice advising that a conference had been set down in October 1993. He failed to appear at the conference. A letter was then sent to him advising that the matter would be listed for another conference, and by a later notice he was given a date for that conference in February 1994. When he failed to appear at the conference in February 1994, the AAT made a decision under s.42A(2)(a) of the *AAT Act* and s.1294 of the *Social Security Act 1991* to dismiss the application without proceeding to review the decision.

Manoli represented himself at the hearing and stated that he had forgotten to attend the October 1993 conference. Although he stated that he had later phoned the AAT, there was no record of that. However, there was a record of a call from him on the date of the February conference, at which time the file note indicated that he was advised that the matter had been dismissed, and that he would have to make an application to have it reinstated.

Some days later, he lodged an application for the matter to be reinstated, advising that he had not received any advice with respect to the time and date of the conference held on 14 February 1994. The DSS opposed