

greater extent than the normal situation': Reasons, para.25.

The AAT found that Scott required substantially more care and attention than that required by a young person of the same age because of a combination of his disabilities and adverse behavioural patterns. The AAT indicated that greater degree of care and attention was likely to continue for at least the foreseeable future.

#### Formal decision

The AAT allowed the appeal and decided that CDA would be payable from June 1992 to the end of June 1995. If Kelly were to seek further payment of CDA after June 1995, she would be required to lodge a new application with the DSS.

[H.B.]

## Disability support pension: evidence of ability to work

**BOSKOVIC and SECRETARY TO DSS**

(No. 9488)

**Decided:** 23 May 1994 by K.L. Beddoe.

Boskovic requested that the AAT review the decision of the SSAT rejecting his claim for disability support pension (DSP).

#### The issues

There were two issues before the AAT. Firstly whether or not Boskovic had a physical, intellectual or psychiatric impairment of 20% or more under Schedule 1B of the *Social Security Act 1991*. Secondly, whether or not Boskovic had a continuing inability to work as required under s.94 of the same act.

#### The facts

Boskovic had previously been in receipt of an invalid pension under the *Social Security Act 1947*. He had been assigned an impairment rating of 35%; a 25% impairment for blindness in his right eye and a 10% impairment for arthritis in both knees. Additionally, there was a recognised condition of arthritis in one ankle.

Boskovic had worked at his own business since 1988, selling flowers by the roadside. He worked at this

business from 2 p.m. till 7 p.m. each day, and it sometimes required him to work longer hours. Boskovic also drove to Sydney once each week so he could purchase stock. In evidence before the AAT, he mentioned that his wife was also involved but sold flowers at a different location. Boskovic's situation had been investigated by the Australian Taxation office as well as the DSS for some time.

His impairments under Schedule 1B of the 1991 Act had been assessed at 10% for arthritis of both knees by a Commonwealth Medical Officer. The CMO assigned a nil ratings for his vision problems and for post concussion syndrome. Boskovic objected to this impairment rating, so he was examined by another Commonwealth Medical Officer. He was assigned a 25% impairment rating for his disabilities.

Notwithstanding this higher impairment rating the DSS decided that Boskovic was still not entitled to DSP as he did not have a continuing inability to work. The DSS contended that his involvement with the flower selling business was evidence of this.

#### Work activity

The AAT accepted that Boskovic had a 25% impairment rating, but decided he did not have a continuing inability to work.

Boskovic submitted in evidence to the AAT that the business was unprofitable, required little attention and was therefore not evidence of an ability to work. The AAT examined the finances of the business and found that he had declared the gross income of the business to be \$500 net per week in a finance application for purchase of a carry van. Evidence before the AAT showed that Boskovic had traded this van in 1990, purchasing a new Ford Econovan priced at \$23,900. He claimed that the purchase was made possible by gambling profit. Further, this van was also traded on a Toyota Hi Ace van in 1993 which Boskovic claimed was also financed by gambling. Contrary to this, Boskovic stated in evidence that he never made more than \$80 a week from selling flowers, and sometimes made nothing.

The AAT established that Boskovic regularly operated the flower van between 1991 and 1993. It found that he was obviously capable of performing light duties, but not necessarily other kinds of work. The AAT found that some testimony given by Boskovic in relation to his business activities was false, and not a frank and

true account of his affairs. The AAT concluded that the flower selling business was reasonably successful and was conducted for at least 40 hours per week.

Additionally, the AAT found that there was no principle of law which required them to find that just because the Australian Taxation Office fails to assess income, that Boskovic did not derive income.

#### Formal decision

The AAT decided that Boskovic did not have a continuing inability to work and affirmed the decision under review.

[B.M.]

## Disability support pension: application of impairment tables

**SECRETARY TO DSS and BELL**  
(No. 9454)

**Decided:** 4 May 1994 by K.L. Beddoe, E.K. Christie and K.P. Kennedy.

The DSS appealed to the AAT for review of the SSAT decision that Bell was entitled to receive the disability support pension (DSP).

#### The issues

The issue before the AAT was whether or not Bell had an impairment of 20% or more pursuant to Schedule 1B of the *Social Security Act 1991*. The DSS claimed that the decision of the SSAT was not justified by the available medical evidence.

#### The medical evidence

Several medical practitioners gave evidence in this hearing. Dr Rolls gave evidence that he did not physically examine Bell, but had reviewed reports of two Commonwealth Medical Officers as well as Bell's own medical practitioners. Dr Rolls stated that the assessment of a 30% impairment under Table 26.4 was not appropriate because Table 26.4 dealt with intermittent conditions, whereas Bell's condition was definitely chronic. Dr Rolls concluded that, although Bell was not fit to perform his usual work, he would be capable of light duties.

Dr Rolls stated that in his opinion