

Administrative Appeals Tribunal decisions

Carer's pension: 'severely handicapped person'; 'the home of the handicapped person'

DUNSTALL and SECRETARY TO THE DSS (No. 12583)

Decided: 4 February 1998 by J.A. Kiosoglous.

Dunstall sought payment of carer's pension in relation to the care of her mother, for the period 14 August 1996 to 9 July 1997. The DSS determined that she was not qualified for that pension and this decision was affirmed by the SSAT. Dunstall sought review of the decision by the AAT.

The issues

The DSS contended that during the relevant period, Dunstall's mother was not a severely handicapped person within s.198 of the *Social Security Act 1991* (the Act). Although she had a physical disability, namely blindness and other complaints, she did not require frequent care in connection with her bodily functions or constant supervision to prevent injury to herself or another person, as required by the legislation. In the alternative, even if she was a severely handicapped person, Dunstall could not satisfy s.198(1)(b) of the Act, which requires that the care be provided in the home of the handicapped person.

The evidence

Dunstall resided at a home in Semaphore Park, whilst her mother lived at Seaton, until 17 May 1997, when she commenced living with her daughter. Dunstall gave evidence that she did various tasks for her mother outside the home, such as shopping and banking. She also assisted in the home by cleaning, washing clothes and ironing. She would pick her mother up from Seaton most days and return with her mother to her own house in Semaphore Park. There she would need to administer all medications. Her mother was able to attend to her own

bathing and toileting requirements. Dunstall would take her mother with her in the car if she needed to go out, as she was concerned about leaving her alone.

The report from the medical practitioner from Health Services Australia concluded that Dunstall's mother required constant supervision outside the home, but that her peripheral vision was adequate for her to cope without assistance in her own home, although she would need help with cooking and food preparation. Reports from a treating general practitioner and an ophthalmologist, however, both suggested that Dunstall's mother would have a great deal of difficulty caring for herself. The general practitioner concluded that her impairments and the effects of medication might well cause errors of judgement such that she could be a danger to herself in daily activities.

Severely handicapped person

The AAT accepted that, although Dunstall supervised her mother whilst she bathed in case of falls, her mother did not require frequent care in connection with her bodily functions. It did, however, find that she required constant supervision to prevent injury to herself, on the basis of the evidence of the treating doctors and looking to the nature of the tasks undertaken by Dunstall for her mother. The AAT therefore found that the definition of 'severely handicapped person' within the meaning of s.198(3) of the Act was satisfied.

The home of the handicapped person

However, to be qualified for carer's pension Dunstall also had to satisfy s.198(1) of the Act which provides:

'A person (the "carer") is qualified for a carer's pension if:

...

(b) ... the care is provided in a private residence that is the home of the handicapped person ...'

The AAT considered previous decisions which had been made in relation to the equivalent provision set out at s.37 of the *Social Security Act 1947* (the 1947 Act). In particular, *Kinsey v Secretary to the DSS* (1990) 20 ALD 14 determined that it was possible for a recipient of carer's pension to have more than one home, as long as the recipient provided care for the severely handicapped person in a home which was the home of both.

The AAT accepted that it would be possible to find that, during the relevant period, Dunstall's mother had two

homes. However it was noted that the terms of s.37 of the 1947 Act and s.198(1) of the current Act were different. The 1947 Act referred to care provided in a home of the carer and the handicapped person, whereas the current Act provides that a carer is qualified for pension if the care is provided in *the* home of the handicapped person. The use of the singular term 'the home' suggests that only one home can be the home of the handicapped person for the purposes of the current Act. In the instant case, Dunstall's mother had her home at Seaton, her official residence, until 17 May 1997 when she moved to Semaphore Park. Dunstall was therefore ineligible for carer's pension for the period 14 August 1996 to 16 May 1997. She remained ineligible from 17 May 1997 to 9 July 1997, because her application for carer's pension was made over three months prior to the date on which she became qualified for that pension. Pursuant to s.201(3) of the Act, carer's pension was not payable to her in those circumstances.

Formal decision

The AAT affirmed the decision under review.

[A.T.]

Disability support pension: inability to work and unrated symptoms; Ménière's disease

SECRETARY TO THE DSS and BUSSTRA (No. 12484)

Decided: 10 December 1997 by K. Beddow.

The issue

The key issue for determination by the AAT was whether symptoms not rated for disability support pension (DSP) purposes were also 'impairments' and able to be considered in determining whether or not an applicant was fit for work or retraining.