

Millgate had argued that because she was receiving a social security benefit when she was injured, she was entitled to earn \$30 a week without it affecting her pension. Her economic loss had been calculated on this basis, and therefore she should not be required to pay this amount to the Commonwealth. Millgate also argued that the medical basis for paying her the pension was not related to the medical basis for paying her compensation settlement. The Federal Court found:

'The AAT was not in error in failing to give weight to the ability of Miss Millgate to earn a limited amount without affecting her pension entitlement, or to the lack of relationship between the medical basis upon which she is entitled to receive invalid pension and the injuries sustained by her in the accident which resulted in her receiving an award of damages.'

(Reasons, p.8)

Formal decision

The Federal Court dismissed the appeal.

[C.H.]

Natural justice: new material

THE SECRETARY TO THE DSS v
MURPHY
(Federal Court)

Decided: 29 June 1998 by Drummond J.

This was an appeal by the DSS from a decision of the AAT which granted Murphy the disability support pension (DSP).

The facts

The AAT found that Murphy had physical disabilities, which resulted in an impairment of 20% under the Impairment Tables. The AAT did not decide, based on those physical disabilities, that Murphy had a 'continuing inability to work' (see s.94(1)(c)).

The AAT also considered whether Murphy had a long-standing alcohol problem, and decided that his alcoholism resulted in an impairment of 30% under the Tables. This gave Murphy an overall impairment of 45%, and resulted in the AAT finding that Murphy was disabled with respect to his mental and physical capacity. The AAT concluded that Murphy was incapable of work and was unable to be retrained based on the medical report of his general practitioner. The doctor had stated that Murphy was unable to undertake physical work because of instability of his left knee, and was unable to be retrained because of alcohol abuse. The doctor advised in the report

that arm, back and eye conditions as well as alcohol abuse had not been previously documented. These conditions would all need further assessment. However, it would appear that Murphy had not mentioned alcoholism to his doctor until July 1997. No tests had been carried out concerning liver impairment, and there was no other documentation of alcohol abuse.

The grounds of appeal

The DSS argued that the AAT had reached its conclusion on alcohol abuse without having proper evidence before it.

The law

The qualifications for DSP are set out in s.94, and require the person to have an impairment of 20% or more under the Impairment Tables and a continuing inability to work, amongst other requirements. Paragraph 4 in the Introduction to the Impairment Tables states:

'For an impairment rating to be assigned the condition must be a fully documented, diagnosed condition which has been investigated, treated and stabilised.'

Fully documented, diagnosed, treated and stabilised

Drummond J noted that for a condition to attract an impairment under the Tables it must be 'permanent'. The person must have received appropriate medical treatment, in this case for alcohol abuse, and after that, appropriate rehabilitation.

The AAT had found that Murphy's alcohol problems had been of long standing and stabilised. It was the Tribunal's opinion that there was no appropriate treatment Murphy could undergo to prevent his alcohol abuse. In any case he probably would not co-operate with rehabilitation. The Court found that these were necessarily conclusions of fact. It then stated:

'Unfortunately there was simply no material in the information placed before the Tribunal by the parties upon which it could reach its conclusion about the unavailability or lack of efficacy of alcohol treatments and programs. Where it is necessary for the Tribunal to reach a conclusion on a matter of fact in order to make its determination, the Tribunal must have available to it material logically probative of the existence of that fact.'

(Reasons, pp.5 and 6)

If a merits review body, such as the AAT reached a conclusion critical to its decision without any evidence available to it, that would constitute an error of law.

Natural justice

Drummond J noted that evidence will usually be provided to the AAT by the parties. Evidence can also be obtained by the AAT from its own inquiries. Although the Tribunal is not bound by the rules of evidence, it could take note of a notorious fact by applying the common

law doctrine of judicial notice, or by applying s.144 of the *Evidence Act 1995*. The Tribunal could also rely upon its own expertise to come to a decision. However, the Court noted:

'Where the Tribunal obtains material of importance to its decision otherwise than from the parties, it will be a breach of the rules of natural justice if the Tribunal fails to alert the party affected that it has obtained material of potential importance to its decisions in sufficient time to give that party an opportunity to deal with that material.'

(Reasons, p.6)

Formal decision

The Court set aside the decision of the AAT and sent the matter back with a direction that it should be re-determined by a differently constituted AAT.

[C.H.]

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education or the equivalent, will be required to be in full-time education or training unless they are specifically exempted. This provision does not apply to those persons who left school before 1 July 1997. Young people under 18 years who are unemployed will have to show they have supported themselves since leaving school, by showing at least 18 months full-time employment, or part-time employment of at least 15 hours a week for 2 years, to be classified as independent. Otherwise their payments will be subject to a parental means test.

It has been estimated that at least 30,000 people, and possibly up to 45,000 people, will be adversely affected by the introduction of the youth allowance. Some of these people will have their allowance cancelled and others will have their allowance reduced because of their parents' means. So the winners are those students who have had their payments increased, especially those now entitled to rent assistance. The losers are young people under 21 who are not independent, whose allowance will be subject to the parental means test. The big losers are young people under 18 who leave full-time education before completing Year 12.

[C.H.]