. reviewed by an SSAT under s.15A(1);
. affirmed, varied or annulled by the Secretary; and
. made the subject of an application for review to the AAT.

The provisions of s.43(1) of the *AAT Act*, which authorised the AAT, for the purpose of reviewing a decision, to exercise all the powers and discretions conferred on the original decision-maker, did not authorise the AAT to review any decision other than the decision under review, the Court said.

In the present matter, the only decision which met the requirements of s.15A of the *Social Security Act* was the decision not to exercise the discretion conferred by s.115E. That decision had been identified by Riley, his solicitors and the Secretary as the subject of the application for review at all stages, including the AAT hearing. Accordingly, the AAT could not review the decisions by which the respondent had received payment of sickness benefit.

Jenkinson J, who gave the principal judgment, said that the decision under review had been confined by Riley's solicitors and the Secretary's officers to the decision not to exercise the s.115E discretion. He referred to a letter written to the Secretary by Riley's solicitors, which had asked that the Secretary's decision to recover be reviewed. Jenkinson J said:

> 'If [Riley's] solicitors had done nothing more in definition of what they sought on [Riley's] behalf than to send the [Secretary] the letter I have quoted, the subject matter of that decision would not have been so confined, in my opinion, for the decision of the subordinate officer to which that letter refers required a consideration of all the criteria specified in s.115D(2). Or if [Riley], not skilled in the law, had himself alone dealt with the [Secretary's] officers, it might have been impossible so to confine that subject matter by reference to what he had said and what he had omitted to say.
>
> But the conduct of [Riley's] solicitors, by the member of the firm who presented [Riley's] case to the SSAT and through that Tribunal to the [Secretary's] delegate, did in my opinion tacitly propose the subject matter for the latter's decision, and the delegate acted upon the proposal, without adverting to the question to which the AAT turned its attention. By those means the decision for review of which the application was made to that Tribunal was in my opinion defined in the terms I have stated.'

(Judgment, p.16)

The Court concluded by noting that the AAT had not reviewed the question whether the s.115E discretion should be exercised; and that it should now do so.

Formal decision

The Federal Court set aside the decision of the AAT and remitted the matter to the AAT to be heard and determined according to law.

Background

POWER TO COLLECT INFORMATION: AN ABUSE OF POWER

In September 1987 the Secretary to the DSS was granted expanded powers to obtain information 'for the purposes of the Act' under Section 164(1). The Welfare Rights Unit (along with many other groups including the New South Wales Privacy Committee) is concerned that DSS will abuse its power to seek information. The major concern is that DSS officers will unnecessarily demand information from social security recipients under threat of cancellation or suspension of income payments for refusal to comply and then hand the information over to another government agency without the individual's knowledge or consent. The DSS has not done anything to allay these fears. No clear guidelines or instructions have been issued to staff to advise them on appropriate use of these far-reaching powers.

It did not take long for misuse and abuse of this power to surface. One case dealt with by the Welfare Rights Unit began in June 1987 when Mrs L received the 'Details of the person who gets Family Allowance payment' form. The form asked in question 2 for the tax file number of the recipient and her or his partner.

Mrs L believed that she did not have to disclose her or her husband's tax file numbers to anyone other than the Taxation Office. In September 1987 Mrs L sent copies of their taxation assessment notices with the tax file numbers deleted. This is when the trouble began.

Mrs L received a phone call in September from the regional DSS office warning that, if she would not give the tax file numbers, her family allowance would be suspended. In late October Mrs L received a letter from the regional office stating that her family allowance would be suspended until she supplied the tax file numbers for herself and her husband.

The reason given for demanding the tax file numbers was 'to establish a liaison between the two departments.' The authority cited for the request for this information was s. 164(1) and the authority for the suspension s. 164(3).

It is our opinion that, not only did the regional office inappropriately invoke the power to obtain information, but technically they had no ability to use it as the form 'details of the person who gets Family Allowance payment' was sent out in July 1987, 2 months before s. 164(1) became effective. Furthermore s. 164(1) states that requests pursuant to the section must give a time period for reply. Mrs L was never given any time lines. Mrs L appealed to the Social Security Appeals Tribunal and the appeal was conceded by the Appeals and Representation Branch of DSS before the hearing.

Mrs L made a Freedom of Information application pending her appeal and received copies of some very interesting material which indicates that her stand was not isolated and this may not be the last we see of DSS attempting to obtain tax file numbers of family allowance recipients. It appears that the Department has listed all recipients who refuse to give tax file numbers, but a decision has been made to hold off any further action for 6 months as the issue is currently 'too sensitive'.

How many other women have lost their family allowance because they or their partners refused to give their tax file numbers? How many have given their tax file numbers because of the threatened loss of family allowance?

It may not be too pessimistic to speculate that many Job Search Allowance applicants will have their income limited to the meagre $25 per week because of their parents' refusal to give tax file numbers to DSS. Will the Department misuse the power to obtain information under s. 164(1) and (3) to penalise unemployed 16-and 17-year-olds and their families?

Beverley Kliger

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