

the concepts of 'psychiatric illness' and 'intellectual handicap' — 'and more': Reasons, para. 28.

The AAT accepted that Kadir's psychiatric illness was a 'mental impairment'. It also considered that there was a strong argument for finding that Kadir's adoption of the invalid role and his lack of motivation constituted a 'mental impairment'. On this point, the Tribunal noted the comment in *Vranesic* (1982) 10 SSR 95, to the effect that 'a person's perception of himself (rightly or wrongly) as an invalid incapable of work may become so entrenched and so ineradicable as to itself constitute a psychological condition which destroys the person's capacity for work': Reasons, para. 30.

However, the AAT found that, in the present case, less than 50% of Kadir's incapacity for work was directly caused by his mental impairment. Although no specific evidence had been given in this matter about Kadir's employability, evidence given in other cases showed that a person whose work experience was limited to labouring jobs and who had successfully claimed worker's compensation for a back injury was unlikely to find employment. That limited work history and successful compensation claim would be major factors in Kadir's inability to find employment.

Other factors, such as his lack of education or training, lack of skill in English, absence from the workforce for 7 years and his complaints of back pain (for which there was no physical basis) were also likely to be significant impediments to his obtaining work. None of these factors constituted a 'permanent physical or mental impairment'.

Formal decision

The AAT affirmed the decision under review.

[P.H.]

Family allowance supplement: whether repaid benefit 'received'

SECRETARY TO DSS and JESSOP (No. 4993)

Decided: 30 March 1989

by B.J. McMahon.

In April 1988, Cheryle Jessop claimed family allowance supplement (FAS) for her children. The DSS rejected that claim because Jessop's husband was then receiving special benefit.

Jessop's husband subsequently recovered worker's compensation and was obliged to refund the special benefit to the DSS. Jessop then renewed her claim for FAS and, when the DSS refused to pay her for the period when her husband had been receiving special benefit, she appealed to the SSAT.

The SSAT allowed Jessop's appeal and decided that she should be paid FAS for the period in dispute. The Secretary to the DSS then exercised the right of appeal in s.207 of the *Social Security Act* and appealed to the AAT.

The legislation

Section 73 of the *Social Security Act* provides that FAS is only payable to a person who 'is not receiving, and whose spouse is not receiving' one of several payments under the Act, including a benefit under Part XIII. Part XIII provided for payment of unemployment, sickness, and special benefits.

Section 153(2) provides that, where a person has received a compensation payment and 'the person received payments of pension during the lump sum payment period', the person may be required to repay the pension. The term 'pension' is defined so as to include special benefit.

'Receiving' special benefit

The SSAT had read the word 'receiving' in s.73(a) as referring to the obtaining of a benefit which did not have to be returned to the DSS. That Tribunal had said that, because Jessop's husband had been obliged to refund the special benefit to the DSS he could not, in retrospect, be regarded as 'receiving' that benefit during the relevant period,

thereby removing the bar to Jessop qualifying for FAS in that period.

However, the AAT disagreed with this approach. It could not see any reason to depart from the ordinary meaning of the word 'receiving'. In particular, this was not a case in which s.15AA of the *Acts Interpretation Act* 1901 should be applied. That provision directed that when, in interpreting legislation, the construction that would promote the purpose or object of an Act was to be preferred to a construction that would not promote that purpose or object.

Section 15AA, the AAT said, was intended to provide assistance in interpreting legislation where the meaning of the legislation was not clear; but 'nothing could be clearer than the meaning of the words used in s.73': Reasons, para. 13. The Tribunal said that the ordinary meaning of the word 'receive' referred to the physical act of taking something into one's possession. At the time when Jessop applied for FAS, the AAT said, her husband was receiving a relevant benefit which disqualified her from FAS:

'It is not possible to look at this retrospectively... There is nothing in the Act which deems entitlement to exist or not to have existed depending upon the outcome of external unrelated events in the future.'

(Reasons, para. 14).

The Tribunal also rejected an argument that to adopt the plain meaning of 'receiving' and to prevent Jessop from qualifying for FAS during the relevant period would amount to an injustice. The AAT said that the purpose of FAS was 'to make additional provision for children in low income families'. The rate of special benefit paid to Jessop's husband and the worker's compensation payments paid to him had included additional payments for the children:

'At all relevant times, therefore, ... financial provision has been made from the public purse for the children of the respondent and her husband. Social security payments are designed to relieve need at the time they are applied for and paid. They are not intended to create a vested interest in a capital sum redeemable upon some future event. At the time the respondent applied for FAS her family was in fact being supported and the children for whose benefit FAS was designed were already the object of income support from the public sector. There is thus no injustice.'

(Reasons, para. 21).

Formal decision

The AAT set aside the decision of the SSAT and affirmed the primary decision of the Secretary.

[P.H.]

