apologised for having a girlfriend and they resumed cohabitation. The statement asserted that N had lived with SRH in Lakemba from August 1991 to January 1992. At the end of the statement was a paragraph which added that whilst SRH lived in Campsie, Liverpool and Punchbowl, N also stayed with his girlfriend in Marrickville. SRH stated that she never thought that she was doing the wrong thing but was 'just alone, pregnant and very lonely, and was used by Mr N for his own purposes': Reasons, para. 73.

SRH said in evidence that she did not really want to sign the statement as it was not accurate. She said that she told the DSS this 'many times and [the DSS officer] doesn't want to listen': Reasons, para. 74. SRH told the AAT that the DSS did not ask her about the household chores, the sexual relationship, their future plans or the childcare arrangements. SRH said she did not provide the dates listed in the statement.

The DSS officer agreed that she did not go through all the indicia of the relationship as SRH had married. She knew that SRH had hospital treatment following N's violence, that SRH felt used as a means of allowing N to remain in Australia and that N gambled. The AAT found that the words of the statement were not those of SRH. Further, the statement did not constitute an admission that she had lived in a *de facto* relationship with N. The AAT expressed concern that SRH frequently sought advice from the DSS. The Tribunal commented 'we are left with a real concern that the Applicant did not want to sign the statements and that she did not believe they were correct': Reasons, para. 79.

The AAT concluded that SRH was submissive and vulnerable, having little understanding of her individual rights and obligations. The Tribunal noted her limited comprehension of written and spoken English demonstrated in her evidence.

Marriage-like relationship?

The AAT distinguished between a sexual relationship and an emotional commitment, finding that the birth of SRH's son was evidence of the former. The AAT indicated that N's presence at the Campsie flat 2 nights a week was not, of itself, evidence of a marriage-like relationship. That he had another relationship, that he did not financially contribute, that his personal effects were not in the house, that SRH knew little of his personal life, and that they did not communicate about personal issues, all mitigated against a marriage-like relationship. The proposed reunion with P, the fact that N wanted an abortion, and her intention to take the baby to the Philippines also indicated there was no marriage-like relationship.

SRH argued that N had used her to make a case for his migration to Australia. The AAT drew a negative inference from the fact that N attended but exercised his right to remain silent. Whilst the AAT had some concern about the accuracy of all the evidence of SRH, they said 'we are reasonably satisfied that most of her evidence was truthful and consistent with other evidence': Reasons, para.110. The AAT noted that the only evidence explicitly referring to a *de facto* relationship between N and SRH was generated for the purpose of N's immigration case. Noting the conflict between the oral evidence of SRH and the documents, the AAT indicated its preference for her evidence on this issue.

The marriage to N in the Philippines in March 1991 was regarded by the AAT as a means of preventing her child being illegitimate. SRH was also under pressure from N to legalise his immigration status. The AAT thought that it was, at most, a marriage of convenience, and that it was not her intention to formalise a marriage-like relationship. Although the circumstances surrounding her marriage to N in December 1993 were unusual, the AAT was satisfied with the explanation provided by SRH. It was a hasty and shortlived marriage with not much forward planning by the couple.

While noting SRH's gullibility, lack of social skills and her 'idiosyncratic personality' the AAT found that her evidence was generally cohesive and consistent with that of others: Reasons, para.122. Whilst her credibility was poor, the AAT believed that SRH would be unable to sustain a cohesive distortion of the truth without inconsistency. The cohesiveness of her evidence was noted as consistent with the assessment of Dr CQ.

Standard of proof

The AAT found that there was only a possibility that a marriage-like relationship existed for some of the period under review. However, the required standard of proof is that the Tribunal must be reasonably satisfied on the evidence. Accordingly, the AAT was not reasonably satisfied that a marriage-like relationship existed. The AAT indicated that, rather than taking a snippet of the evidence to reach a conclusion, as urged by the DSS, it took an overview of the whole of the evidence.

Findings

The AAT was not reasonably satisfied that N was living with SRH for any of the period under review except the period from August 1991— when N returned from the Philippines, until a few weeks later when he left after a violent episode.

The AAT added that if it was wrong in this finding, it was not reasonably satisfied on the evidence that there was a marriage-like relationship. The AAT said 'there would be very few marriages visited with the litany of negatives which have punctuated the relationship between Mr N and the Applicant': Reasons, para.127. Whilst there was clearly a relationship that waxed and waned, the weight of the evidence suggested there was never a marriage-like relationship during the period under review.

Formal decision

SRH was not living in a marriage-like relationship as defined by the 1947 Act and was not a member of a couple as defined by the 1991 Act. The case was remitted to the DSS for reconsideration.

[H.B.]

Member of a couple

GROZDANOVSKA AND SECRETARY TO DSS (No. 10718)

Decided: 5 February 1996 by D.J. Grimes, M.M. McGovern and M.S. Bullock.

Background

Grozdanovska's sole parent pension was cancelled by the DSS on the 4 November 1994 on the basis that she was a member of a couple and therefore not entitled. The SSAT affirmed the DSS decision and Grozdanovska lodged an appeal to the AAT.

Grozdanovska moved to Australia at the age of twelve. In 1979 she married, and in 1980 her daughter was born. She later divorced. In 1991, Grozdanovska had a second child, a son. In January 1992 Grozdanovska moved into a house owned by Petreski, the father of her second child. In 1994, both Grozdanovska and Petreski gave statements to the DSS to the effect that they had, for the last three years, both lived with Grozdanovska's parents, and had on occasion lived at Petreski's house. In March 1994 Grozdanovska had a third child with Petreski.

Grozdanovska had maintained that Petreski was her landlord and that they did not have any other relationship beyond that.

The issues

The AAT looked at the nature of the relationship between Grozdanovska and Petreski in the context of ss.4 and 249 of the *Social Security Act 1991*. Section 4 of the Act contains the relevant definition of 'member of a couple', whereas s.249 of the Act provides, *inter alia,* that a person is not entitled to receipt of sole parent pension if a person is a member of a couple.

Member of a couple

The AAT chose to consider this matter by comparing Grozdanovska's circumstances with each of the matters contained in s.4(2).

The AAT found at the outset that Grozdanovska and Petreski had been living in the same residence since January 1992.

Financial aspects of the relationship

The evidence before the Tribunal from both Grozdanovska and Petreski was that there was no intermingling of finances within the household. Further they both gave evidence that household costs were not shared. The AAT found that there was an ambiguous loan arrangement between Petreski, Grozdanovska and Grozdanovska's father to the apparent effect that Grozdanovska had an equitable interest in the house in which she lived.

The AAT also found that Grozdanovska and Grozdanovska's father had loaned Petreski money with which to purchase the house, but that the loan would not need to be repaid if Grozdanovska and Petreski were married.

The nature of the household

The evidence before the AAT indicated that Grozdanovska had complete care and control of the children and that household chores were not shared. The AAT found that much of the evidence given by Grozdanovska was inconsistent.

The social aspects of the relationship

The evidence given was that Grozdanovska and Petreski did not socialise at all. The AAT found this evidence was also inconsistent.

Sexual relationship

The AAT found that this evidence was also inconsistent. It found that both Grozdanovska and Petreski had made inconsistment statements about the nature of their sexual relationship.

Commitment to each other

The AAT heard evidence that Grozdanovska and Petreski did not see their relationship as marriage-like. They did not rule out marriage and both accepted that their present living arrangments would continue.

The law

The AAT looked at the decision of *Secretary, Department of Social Security and Le-Huray* (1995) 36 ALD 682 which considered s.4(3) of the Act. In *Le-Huray*, the AAT had reflected on the cases of *Staunton-Smith v Secretary, Department of Social Security* (1991) 25 ALD 27 and *Tang and Director-General of Social Services* (1981) 3 ALN N83. The AAT acknowledged that there needed to be a consideration of all relevant material before the Tribunal, so that 'the respondent may know, at the end of the day, in full and complete detail, the reasoning process that guided the Tribunal to its ultimate conclusion': Reasons, para. 20.

Conclusion

The AAT found that the evidence of both Grozdanovska and Petreski was:

> 'extremely inconsistent. The evidence of their household arrangements, sexual relationship, the loan arrangement, and the relationship between Mr Petreski and Ms Grozdanovska was often inconsistent, contradictory, and difficult to follow.'

(Reasons, para. 21)

Following on from this, the AAT found that it was unable to accept much of the evidence given by Grozdanovska and Petreski about their relationship, and that there were clearly instances of their written statements in evidence contradicting their oral evidence. The AAT referred to *Petty and Davis and Director-General of Social Security* (1982) 4 ALN N214

> 'Where applicants make an untruthful and misleading statement concerning their relationship, they must realise that the inference is likely to be drawn against them, that they are endeavouring to conceal the true nature of their relationship.'

(Reasons, para. 22)

The AAT found that there were elements which indicated that the relationship was marriage-like, and that evidence given by Grozdanovska and Petreski lacked credibility.

Formal decision

The AAT affirmed the decision under review.

[B.M.]

Superannuation fund transfer: allocated pension

SMITH and SECRETARY TO DSS (No. 10617)

Decided: 20 December 1995 by S.A. Forgie.

Background

When Smith retired in May 1992, he received a lump sum payment of superannuation. He invested the entire sum of $216,885 in the form of an allocated pension with Excelsior Managed Superannuation Plan. From 22 March 1994 Smith also received the mature age allowance. During 1994, Smith became worried about his investment. Acting on the advice of his financial advisor, he removed his money from Excelsior and placed it with LifeTrack Superannuation Fund. He completed the relevant documents on 19 April 1994.

The issues

Was the LifeTrack superannuation pension an allocated pension? If so, was the pension purchased before 1 July 1992?

The legislation

The issues relate to the rate of payment of Smith's mature age allowance. In order to use the pension rate calculator at the end of s.1064 of the *Social Security Act 1991*, the first step is to ascertain the value of the person's assets. Usually asset means property (see s.11(1)). But s.1118(1) of the Act states that certain property is to be disregarded.

Prior to 1 July 1994, s.1118(1)(d) said that the value of any superannuation pension was included among the property to be disregarded. The *Social Security Legislation Amendment Act (No. 2) 1994* amended that provision. From 1 July 1994 among the property to be disregarded was:

> 'The value of any superannuation pension of the person that is not an allocated pension.'

'Allocated pension' is defined in s.9(8) as:

> 'A pension or annuity is an allocated one if:
>
> (a) the pension or annuity was purchased on or after 1 July 1992; and
>
> (b) either:
>
> (i) the rate of payment of the pension or annuity; or
>
> (ii) the basis for variations in the rate of payment of the pension or annuity:
>
> is not fully defined in the relevant trust deed or contract.'