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Opinion

Administrative review: checking Departmental practice and policy

Several of the decisions noted in this issue of the *Reporter* indicate that the AAT expects a high standard of administration from government Departments; and that clients of those Departments should not bear the consequences of a Departmental failure to meet that standard.

In *Di Prinzie* (p. 896), the AAT found that overpayments of invalid pension received by the applicant before March 1986 had not been made in consequence of the applicant's failure to notify his income as required by s.163(1) of the 1947 Act. This was because the notices given to the applicant by the DSS had not specified how he should advise the DSS of any increase in his income. (This decision has recently been set aside by the Federal Court, because it did not take account of the repealed s.45(2), whose existence at the time of the overpayment was not drawn to the attention of the AAT.)

In *Greenwood* (p. 897), the AAT found that, although the applicant reported her income to the DSS in a way which did not strictly comply with s.163(1) of the 1947 Act, the Department's acceptance of the way in which the applicant reported her income over a period of about a year broke the link between her failure to comply with the Act and the overpayments made to her.

In *Sharman* (p. 904), the AAT found that there were 'special circumstances', to justify releasing the applicant from part of his obligation to refund the cost of rehabilitation services after he had received a compensation award, in the failure of the relevant Department to inform the applicant of the cost of those services at the time when he

received them. The AAT noted that the Department had adopted its normal practice in concealing the cost of the services from the applicant; but said that, because the situation should be seen 'from the individual's point of view', the repetition of the Department's default did not prevent its action being treated as 'special circumstances'.

The role of administrative review in correcting errors in administration and providing a forum to challenge Departmental policies is brought out in two other decisions.

In *Mouratidis* (p. 901), the AAT emphasised the point that the focus of the AAT's decision-making is on the decision under review, rather than the applicant's general history. When supporting a decision to cancel an invalid pension in 1990, it was not enough for the DSS to prove that the applicant had worked at some point during the preceding 17 years while receiving invalid pension. As the AAT was reviewing a 1990 decision to cancel the applicant's pension, the question was — could the AAT be satisfied that the applicant was no longer permanently incapacitated for work in 1990?

In *Schofield* (p. 905), the AAT accepted that DSS guidelines on the discretion to pay special benefit were 'a proper starting point'; but other relevant factors could not be ignored by the AAT in a particular case. Although the guidelines concentrated on financial matters, the AAT also considered the applicant's medical history, health needs and personal circumstances.

These decisions, and several others noted in this issue, reinforce the truism: the introduction of the Australian system of administrative review in the 1970s and its extension to the area of social security in the 1980s marked a significant advance in the rights of those who depend on government administration for financial support.

[P.H.]

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