# Invalid pension: rate

**AMBROZICH AND SECRETARY TO DSS**
**(No. S86/287)**
**Decided:** 1 May 1987 by J.A. Kiosoglous

The applicant had been in receipt of invalid pension since November 1974. In April 1975 he had returned to West Germany and continued to receive the pension in that country. The DSS sent him a cheque in Swiss francs which the applicant then converted to Deutch Marks.

In February 1977 the applicant requested a review of the rate of his pension on the basis that the cost of living in West Germany was high and he also lost part of his pension as the result of the exchange rates. He also referred to his inability to obtain any health care benefits. In 1985 the DSS began to issue cheques in United States dollars. The applicant again raised similar complaints and appealed to an SSAT. The SSAT recommended that the appeal be not allowed as the applicant was already receiving the maximim rate of pension. No increase could be made under the *Social Security Act*. The applicant then applied to the AAT.

The AAT confirmed the view of the SSAT. The rate of pension was fixed by the Act. There is no discretion to vary the rate of pension paid to a person.

> 'This Tribunal is mindful that the applicant is suffering a loss resulting from fluctuations in the exchange rate, and sympathises with the financial position the applicant finds himself in, but it is beyond the control of the Department. There is no provision to make up the variation in the exchange rate. However, as the exchange rate fluctuates it is conceivable that at certain times the exchange rates wil benefit the applicant. This is the risk the applicant took when he left Australia.' (Reasons, para.18)

The AAT could only make similar comments with respect to the high cost of living in West Germany and his lack of health care cover in that country. These were factors that the Australian social security system could not address.

**Formal decision**
The AAT affirmed the decision under review.

# Wrong claim

**REID AND SECRETARY TO DSS**
**(No. V86/674)**
**Decided:** 30 March 1987 by I.R. Thompson

[Note: The Tribunal gave its reasons orally in this decision. The following is from a DSS summary of the decision.]

The applicant had a severely handicapped child. The wife of the applicant had been in receipt of family allowance and handicapped child's allowance. In December 1983 the son turned 16 and the DSS sent a family allowance review form without any information as to invalid pension. Family allowance and handicapped child's allowance continued for the son who attended a special school and then a sheltered workshop. In February 1986 a claim was made for invalid pension. The applicant appealed against a DSS refusal to backdate payment.

**The AAT's view**
The AAT said that the review form was a claim form for family allowance and handicapped child's allowance, that on the facts of the son's disability a claim for invalid pension would be a claim for payment to the parents, that handicapped child's allowance was similar in character to invalid pension and that the DSS procedures to notify the availability of invalid pension had broken down. As a result the Tribunal said that the discretion in s.135TB(5) of the *Social Security Act* should be exercised to regard the claim for handicapped child's allowance as a claim for invalid pension. [Section 135TB(5) gives the Secretary to the DSS a discretion to treat an application for one pension, benefit or allowance as an application for another pension, benefit or allowance which 'is similar in character'.] Thus the invalid pension could be backdated to the first pension pay day after the claim was lodged.

**Formal decsion**
The AAT set aside the decision under review.

# Federal Court decision

**SECRETARY TO DSS v. COPPING**
**(Federal Court of Australia)**
**Decided:** 1 June 1987 by Forster, Jenkinson and Burchett JJ.

This was an appeal from the AAT's decision in *Copping* (1987) 38 *SSR* 475.

The Tribunal had decided that a farming property owned by Mr and Mrs Copping, but farmed by their son, was covered by s.6AD(1) of the *Social Security Act* and should not be included in the assets test, because they could not reasonably be expected to sell, realize or use the property as security for borrowing; and they would suffer 'severe financial hardship' if the value of the property were included.

The AAT had also decided that there was no income which Mr and Mrs Copping could reasonably be expected to derive from the property under s.6AD(3) of the Act. This was because they could not be expected to throw their son off their property; he was struggling to survive in the slumping rural economy; and to expect him to pay rent to Mr and Mrs Copping was unrealistic.

**Personal circumstances relevant**
In this appeal, the DSS argued that the AAT had made an error of law by taking account of the personal and financial circumstances of Mr and Mrs Copping's son.

The Federal Court, in a judgment delivered by Jenkinson J., decided that the matters taken into account by the AAT were matters which it was required to take into account. There had, accordingly, been no error of law on the part of the AAT and the appeal should be dismissed with costs. Jenkinson J. said:

> 'I think the word "reasonably", in the context which s.6AD(3) supplies, directs the Secretary's attention to *inter alia*, all the circumstances, including the personal relations of those concerned in the property, which in his judgment might reasonably be taken into account by "the person" . . . in deciding how the property was to be exploited to produce income. . . The construction suggested [directs] enquiry as to what annual rate of income the Secretary, or the AAT on a review, considers would be likely to be derived from, or produced with the use of, the property by that person if that person made decisions concerning the exploitation of the property which in all the circumstances, including personal circumstances, the Secretary, or the Tribunal on review, considered reasonable.'

(Judgment, pp.10-11)

This was the enquiry, Jenkinson J. said, which the AAT had undertaken. It had not been argued that the AAT's conclusion on that enquiry was unsupported by the evidence; and so the