left the address. The AAT distinguished Shanahan because in that case no mail had been returned to the DSS, while in the present case the DSS was on notice, from the time that the letter of 14 October 1989 was returned, that Garratt was no longer living at that address.

The AAT said that the DSS could not rely on the last known address for the purpose of a notice under the Act. Accordingly, no notice was given to Garratt of the decision to cancel. Since the AAT was satisfied that Garratt remained qualified for the allowance at all relevant times, the AAT concluded that family allowance should be restored from the date of cancellation.

Formal decision

The AAT affirmed the SSAT decision that family allowance be restored from the date of cancellation.

[Comment: The AAT did not state which decision it was reviewing: the cancellation decision of 19 October (which it appeared to agree with) or the later decision to grant the claim of 28 July with effect (only) from 25 July. It appears not to have been the later decision, since the law relating to payment from a date earlier than the date of claim was not discussed.

If it was the cancellation decision that was under review, the question of arrears does not arise if that decision was affirmed. Section 168(4) of the *Social Security Act* 1991 limits payment of arrears by restricting the date of effect of a decision on review that sets aside or varies an earlier decision.

It would have been open to the AAT to set aside the DSS decision to cancel Garratt's family allowance: cancellation may not have been the preferable action on the part of the DSS when it was unable to locate Garratt; rather, suspension may have served the Department's purposes without unduly compromising Garratt's rights.]

[P.O'C.]

Double orphan's pension: father unknown

WILLIAMS and SECRETARY TO DSS

(No. 7719)

Decided: 31 January 1992 by P.W. Johnston, T.E. Barnett and J.G. Billings.

Jeanette Williams had held the lawful custody and guardianship of her grandson since he was about 6 months old. She was receiving family allowance for her grandchild.

The child's mother suffered from paranoid schizophrenia and had sustained a serious spinal injury. She was a mental hospital patient and was expected to remain so indefinitely. The identity of the child's father had never been known. (It appeared that the child was conceived while his mother was hitchhiking across Australia.)

Williams claimed a double orphan's pension for her grandchild. The AAT rejected the claim, and the SSAT affirmed that decision. Williams then appealed to the AAT.

The legislation

Section 95(1) of the *Social Security Act 1947* provided that a double orphan's pension was payable to a person qualified to receive family allowance for a child, where the child was a 'double orphan'.

According to s.94(1), a 'double orphan' was a child, both of whose parents were dead.

Section 94(4) declared that, where one of a child's parents was dead, the other parent should be deemed to be dead if–

(a) the whereabouts of the other parent are not known to the claimant; or

(b) the other parent is serving a life sentence or a sentence of not less than 10 years; or

(c) the other parent is a mental hospital patient, and the Secretary is satisfied that he or she will require care or treatment indefinitely.

Child's father not dead

There was, the AAT said, no ambiguity in the meaning of the term 'dead' in the 1947 Act, and that term should be confined to the physical or biological condition of death. It did not refer to a person whose identity was not known and who was therefore 'no longer in existence or use', to quote one of dictionary definitions of 'dead'.

Similarly, the term 'parent' in s.94 of the Act referred to the natural or biological mother or father of the child and not to a person who, as well as being the biological parent, took some parental responsibility for the child.

It followed that the unidentified father of Williams' grandchild was a 'parent' for the purposes of the *Social Security Act*, but could not be regarded as 'dead'.

The AAT said that, under s.94 of the *Social Security Act 1947*, at least one of a child's parents had to be dead in the conventional, biological sense, and the other parent deemed to be dead, before the child could be regarded as a double orphan.

There was no evidence, the AAT said, from which it could infer that the child's father (never identified) was now dead. An unexpected disappearance might suggest the possibility of death; but the father's disappearance in the present case was not unexpected – it was the very thing that was likely to have occurred, the AAT said.

Nor was the tribunal prepared to apply a presumption of death. There was nothing in the known facts which provided any basis for the presumption's application. There was nothing in the primary facts which pointed to the possibility of death as something reasonably open.

Formal decision

The AAT affirmed the decision under review.

[P.H.]

Special benefit: discretion

SANDHU and SECRETARY TO DSS

(No. 7849)

Decided: 26 March 1992 by J.R. Dwyer.

Tedja Sandhu migrated to Australia with his wife in May 1989. They had been sponsored by their daughter, who signed an assurance of support as did her husband.

At first, Mr and Mrs Sandhu lived in a provincial Victorian city with their daughter and son-in-law. However, because of friction within the family and because they could not practise