unemployed and was capable of undertaking, and was willing to undertake, paid work that, in the opinion of the Director General, was suitable to be undertaken by the person; and
(ii) he had taken, during the relevant period, reasonable steps to obtain such work.

Section 119(1B) also provides that the benefit is payable where a person becomes registered as unemployed and claims benefit within 14 days.

Should Braund have been registered on 20 September?

As he failed the work test contained in Section 107, the AAT held that it was not reasonable for the CES to refuse to register him on 20 September.

I have no doubt that [the applicant] went to the Unley CES office and said that he wished to register as unemployed and made it known that he wanted an interview [after which registration takes place] that afternoon because he was due to go to the Yorke Peninsula to visit his parents the following day. I have no doubt also that the CES officer who attended him at the counter formed the impression that he was going to the Yorke Peninsula for a holiday and was not going to be available for employment during his absence, and that as a result she told him that either he must come the following day and attend the registration interview or she would not give him the registration form to complete. The applicant has said nothing at any time to indicate that there was any pressing need for him to go to his parents' home on 21 September instead of waiting to have his registration completed and to apply for an unemployment benefit before going . . .

(Reasons, para. 12)

The AAT also considered the effect of applying for registration on 20 September.

. . . even if the oral requests made by the applicant on 20 September for an application card and a registration interview should be regarded as an application for registration, by departing in the circumstances in which he did before completing such a card or having such an interview the applicant abandoned that application. His registration was the result of the application which he made on 1 October. It cannot be regarded as having taken place before that date.

(Reasons, para. 13)

Formal decision

The AAT affirmed the decision under review.

Special benefit: method of calculation

ALBRECHT and DIRECTOR-GENERAL OF SOCIAL SECURITY
(No. S83/7)

Decided: 10 November 1983 by J.O. Ballard.

The applicant's wife was in receipt of invalid pension. Albrecht gave up his work to look after her and was in receipt of special benefit.

The applicant's complaint was in relation to the calculation of the rate of his special benefit. His wife's income included an amount that was interest from certain joint investments with the applicant. As that amount was below the amount specified in s.28(2) it did not operate to reduce the rate of her invalid pension. It was effectively disregarded.

In assessing the rate of the applicant's special benefit, however, the income of his wife was taken into account. This operated to reduce his benefit. This amounted, argued Albrecht, to an effective deduction of his wife's invalid pension as their income was in effect joint. Why should s.114(3) override s.28(2)?

The AAT could not assist Albrecht:

As I read the legislation, the [DSS] had no option but to calculate the applicant's special benefit, having regard to the wife's income both from her invalid pension and from such meagre private sources as she had. The fact that it has, in the applicant's eyes, the effective result of bringing into the calculation of the amount of his benefit income which would not be relevant for calculating his wife's pension is not in point for the purpose of the calculation of the benefit.

(Reasons, para. 10)

Formal decision

The Tribunal affirmed the decision under review.

Family allowance: late application

GEIDANS and DIRECTOR-GENERAL OF SOCIAL SECURITY
(No. W82/72)

Decided: 29 August 1983 by G.D. Clarkson.

The applicant and his wife separated in June 1979. Three children of the applicant lived with him in the family home, however, the mother (who had one child living with her) continued to receive family allowance in respect of all four children.

In November 1981 the applicant applied for family allowance and claimed back payment to the date of separation. This back payment was rejected by the DSS and the applicant applied to the AAT for review of that decision.

The legislation

Section 102(1) of the *Social Security Act* provides:

. . . a family allowance granted to a person – . . . shall be payable –
(a) if a claim is lodged within six months after the date on which the claimant became eligible to claim the family allowance, or, in special circumstances, within such period as the Director-Genral allows – from the commencement of the next family allowance period after that date; or
(b) in any other case from the commencement of the next family allowance period after the date on which the claim for family allowance is lodged.

Need for 'special circumstances'

What constitutes special circumstances for the purposes of this section has been well canvassed by the AAT (see *Messina* (1983) 14 *SSR* 137, *Q*, *Cassoudakis*, *Manzini* (1983) 14 *SSR* 138, *De Graaf* (1981) 3 *SSR* 26 and *Faa* (1981) 4 *SSR* 41).

Geidans claimed that he had not been aware of his entitlement and that he had been misinformed by his wife that family allowance could only be paid to the wife.

These were not 'special circumstances', said the AAT. It was clear that lack of knowledge of an entitlement does not constitute 'special circumstances' within the section.

Formal decision

The AAT affirmed the decision under review.

COIN and DIRECTOR-GENERAL OF SOCIAL SECURITY
(No. N82/547)

Decided: 16 September by P.K. Todd.

Susan Coin gave birth to her second child on 31 August 1979. At that time an application for family allowance was posted to, but not received by, the DSS. The non-payment of allowance was not discovered by the applicant until 3 March 1982. A claim was made at this time and allowance was paid from 15 March 1982. A claim for back payment from the date of birth to 15 March was rejected by the DSS. The applicant applied to the AAT for review of that decision.

Had an application been lodged?

Section 98 of the *Social Security Act* provides:

A claim for family allowance –
(a) shall be made in writing in accordance with a form approved by the Director-General;
(b) shall be supported by such declaration as is approved by the Director-General; and
(c) shall be lodged with a Director.

Coin submitted that by posting the application she had 'lodged' it in accordance with the Act. The Act did not require the Director-General to 'receive' the application.

This was not accepted by the AAT. The Tribunal regarded s.98 as requiring that the application arrive at the office of the DSS. To 'lodge' documents meant they must be filed or left with the appropriate official.

The Tribunal referred to *Messina* (1983) 14 *SSR* 137 which held that the posting of a claim does not satisfy the requirement in s.98 that the claim be lodged with a Director.

Were there 'special circumstances'?

As no claim had been lodged within the required period the question then was whether there were special circumstances allowing the period of lodgement to be extended, as set out in s.102(1)(a) of the Act. (The legislation is set out in *Geidans*, this issue.)

The AAT could find no special circumstances in this case. The fact that Coin had little time to check whether or not she was receiving the allowance due to extra attention required by her child or that she had posted the claim did not constitute special circumstances.

Reform

The AAT commented once again on the narrowness of s.102 (see *Manzini* (1983) 14 *SSR* 138).

> There is undoubtedly a need for a provision to restrict claims where a number of possible applicants are to be considered eligible for the payment of family allowance for a child, for example, where a child is cared for exclusively in the home of a person other than its parent, or where a child spends periods of time in the care of different poersons and/or institutions. It is however hard to see why the Act should be drawn so as to operate to restrict the payment of family allowance where the child has remained in a stable situation and there are not a number of competing claimants for the allowance.

(Reasons, para. 14)

Formal decision

The AAT affirmed the decision under review.

Sickness benefit: recovery from compensation

EVAGREW and DIRECTOR-GENERAL OF SOCIAL SECURITY
(No. V83/80)

Decided: 28 October 1983 by J.O. Ballard, H.W. Garlick and H.E. Hallowes.

In February 1973, Christopher Evagrew was injured at work. He received worker's compensation payments until August 1974. In September 1973 he was involved in a motor car accident. This led to civil proceedings which resulted in him being awarded $59 200 compensation in August 1979. He had been in receipt of sickness benefit since September 1973.

The DSS wrote to his solicitors in October 1974 advising them that under s.115 sickeness benefit was recoverable after an award of damages and asking them to advise the Department of any award, and to the State Motor Car Insurance Commissioner advising of the *intention* by the DSS to recover 'the whole or some part' of sickness benefit paid in respect of the incapacity suffered in the car accident and also stating that a notice under s.115(6) specifying the amount would be sent in due course. No notice under this section was ever sent.

On 28 September 1979 the State Insurance Office sent to the DSS a cheque for $14 394.43, this sum being the amount of sickness benefit paid to Evagrew. It appears that the DSS decided to retain $7 908.57 as the amount recovered under s.115. The applicant applied to the AAT for review of the decision to retain this amount.

The legislation

As the relevant legislation was that at the time of the payment by way of compensation and at the time of the various decisions by the DSS the AAT could not take account of the 1979 amendments to the Act.

Section 115(1) then provided that the rate of sickness benefit payable to a person is to be reduced by the amount of compensation the person is receiving or entitled to receive, so long as the sickness benefit and the compensation cover the same period and the same incapacity.

If sickness benefit is paid without any deduction (where compensation comes after the payment of sickness benefit) the DSS may recover an amount equivalent to the overpaid sickness benefit under either sub-section (4) or sub-section (6).

Under sub-section (4), the DSS may recover the overpaid sickness benefit from the person who received the benefit and the compensation payment. Sub-section (4A) gives the Director-General a discretion to release the person from the liability created by sub-section (4) if the Director-General is satisfied that 'special circumstances exist'.

Under sub-section (6), the DSS can recover the overpaid sickness benefit from the person liable to pay compensation to the sickness beneficiary.

No authority to retain money

The Tribunal took the view that as the applicant had not received a payment of compensation s.115(4) was inapplicable and therefore the discretion to waive recovery in s.115(4) could not be invoked.

However, no notice had been served on the insurer as required under s.115(6). This meant the DSS could not retain the money.

> In the result [the DSS] has no authority to retain the monies lawfully awarded to the applicant pursuant to the judgment in the civil proceedings. On that basis the whole sum should be paid to the applicant as monies of his wrongly held by the respondent.

(Reasons, para. 15)

Even if Evagrew had received the compensation payment recovery should be waived, thought the AAT:

> In our view special circumstances exist having regard, inter alia, to the high medical costs met by the applicant, his continuing need for medical treatment, his legal expenses and having regard to the period during which the applicant was paid no benefit and had to borrow to live.

(Reasons, para. 16)

Formal decision

The AAT set aside the decision under review and substituted a decision that the Director-General refund to the applicant the amount of $7908.57.

Special benefit: overpayment

WEINBERG and DIRECTOR-GENERAL OF SOCIAL SECURITY
(No. V82/7)

Decided: 11 November 1983 by R. Balmford, H.W. Garlick and R.A. Sinclair.

The applicant applied to the AAT for review of a DSS decision to recover from her an overpayment of $1987.98 in special benefit.

The facts

Mrs Weinberg was granted special benefit from 19 January 1978. She was divorced with two young children. She claimed the benefit because she intended to take leave without pay from her job in December and January to look after her children. However, she found someone to look after her children and returned to work.

The DSS commenced to send her payments of special benefit and, despite repeated attempts by the applicant to clarify the situation, did not discontinue payment. Finally the DSS made the demand for a refund.

The legislation

Section 124(1) of the *Social Security Act* then read:

> The Director-General may, in his discretion, grant a special benefit under this Division to a person –
>
> ...
>
> (c) with respect to whom the Director-General is satisfied that, by reason of age, physical or mental disability or domestic circumstances, or for any other reason, that person is unable to earn a sufficient livelihood for himself and his dependants (if any).

Section 130A read –

> A beneficiary who –
>
> (a) commences to engage in paid employment (including casual employment) with an employer;
>
> ...
>
> shall, immediately upon so commencing to engage in paid employment ... notify a Registrar accordingly.

Recovery of overpayment

There was no issue of the DSS recovering the overpayment under s.140(1) as it did not arise from a false statement or declaration, failure or omission to comply