

was necessary to establish that the deprivation of income had been undertaken for the purpose of obtaining a pension at a higher rate, rather than for some other purpose.

In the present case, Mr & Mrs Stipo and their daughter had argued that the purpose behind providing the money for the daughter's purchase of a house was to provide her and her fiancée with some security and an income in anticipation of their marriage.

On the other hand, the DSS argued that, because Mr & Mrs Stipo had provided the money to their daughter within one month of being told that Mrs

Stipo's pension would be reduced, the conclusion was inevitable that they had intended to obtain a higher rate of pension for Mrs Stipo.

The AAT said that there was no basis for treating the money provided by V or the money held in trust for A as a deprivation of income under s. 47(1):

'In my view money placed in trust for children before notice of the reduction in the pension rate [was] not so placed to obtain a higher pension and should be excluded . . .

25. However, I see force in the respondent's representative's argument that the timing of events is of

significance in relation to the moneys provided by the applicant for A's house. It seems to me that the purchase of the house for A and the applicants' direct contribution, otherwise than from money in trust, must be seen as being effected in order to obtain the higher rate of pension; I so find.'

#### Formal decision

The AAT varied the decision under review by substituting for the DSS decision the applicant had deprived herself of income amounting to \$8972 a decision that the applicant deprived herself an income amounting to \$3839.

## Overseas pension: 'special need'

Re HARRIS and SECRETARY TO DSS (No. V84/447)

Decided: 14 March 1985 by R. Balmford.

Thomas Harris had been born in England in 1897. In 1922 He migrated to Australia and worked here until 1967, when he returned to England. He was then granted a full United Kingdom age pension.

In 1984, Harris returned to Australia and claimed an aged pension under s. 21A of the *Social Security Act*. When that claim was rejected by the DSS, Harris applied to the AAT for review.

#### The legislation

Section 21A of the *Social Security Act* provides that a man aged at least 65 is qualified to receive age pension if he fulfills certain residence requirements (which Harris met) and if he -

'(f) is a person who, in the opinion of the Secretary, is in special need of financial assistance . . .'

#### Harris' financial situation

Harris told the AAT that his only income came from the UK age pension and that his expenses exceeded his income by 6 pounds a week. He had been able to cover this excess out of his savings until late 1984; but the savings had now been reduced to 300 pounds. Harris also told the AAT that he owned his own home, which was valued at 18 000 pounds.

#### 'Special need'

The AAT said that, before a person could be described as 'in special need of financial assistance', that person's financial situation had to be exceptional or unusual judged by the standard of living of the country in which he had chosen to live. Because Harris was receiving an age pension from the UK government, a pension which appeared to be comparable with other pensions paid in that country, it could not be said that his financial circumstances were unusual:

'[I]n terms of the standard of living expected of pensioners in the country generally, I do not consider that he can be said to be 'in special need of financial assistance' when the additional force which Parliament must have intended to give to that phrase by the use of the word "special" is taken into account. In my view, it is appropriate to measure the needs of a applicant under s. 21A . . . by reference to the standard of living in which that applicant has chosen to live. In saying this, I would not wish to suggest that there are not other means of measuring those needs which may be equally appropriate in other circumstances.'

(Reasons, para. 13)

In coming to this conclusion, the AAT adopted the approach taken in the earlier decision of *Buttigieg* (1983) 17 SSR 178.

#### Formal decision

The AAT affirmed the decision under review

## 'Income'

MARSH and SECRETARY TO DSS (No. N84/531)

Decided: 19 April 1985 by A.P. Renouf.

William Marsh had been granted a part-time training allowance (of \$46 a week) under the Labour Adjustment Training Arrangements administered by the CES. At that time, Marsh was being paid unemployment benefit and the DSS decided to treat the training allowance as 'income' and to reduce Marsh's unemployment benefit. Marsh asked the AAT to review that decision.

#### 'Income'

Section 114 of the *Social Security Act* provides an income test for unemployment benefit: where a person's income exceeds \$20 a week, the unemployment benefit payable to that person is to be reduced.

Section 106(1) defines 'income' as meaning -

'any personal earnings, moneys, valuable consideration or profits earned, derived or received by that

person for his own use or benefit by any means from any source whatever . . . and includes any periodical payment or benefit by way of gift or allowance, but does not include -  
(b) a payment received by a trainee in full-time training under a programme included in the programmes known as the Labour Force programmes . . .'

The AAT said that an allowance paid to meet training expenses would not fall within the normal meaning of 'income'; but, because there was a very broad definition of income in s. 106(1), the allowance paid to Marsh had to be treated as income for the purposes of unemployment benefit.

The Tribunal also pointed to the fact that, in the s. 106(1) definition of income, 'express exception is made for the allowance when received by a full-time trainee and not for one from which a part-time trainee benefits'. This, the AAT said, was a significant distinction .

#### A discretion to waive the income test?

The AAT then dealt with an argument raised on behalf of Marsh, that the Secretary had a discretion to increase the rate of Marsh's unemployment benefit, despite the terms of s. 114(1) of the *Social Security Act*.

It was argued that this discretion arose from s. 135TJ(3) of the *Social Security Act*:

'If, having regard to any matter that affects the payment of . . . benefit . . . the Secretary determines that the rate of . . . benefit . . . is less than it should be, the Secretary may, by determination, increase the rate of . . . benefit . . .'

The AAT said that the discretion given to the Secretary under s. 135TJ(3) was subject to s. 114(1) which left the Secretary with no discretion: the income test was an 'overriding provision'.

#### Formal decision

The AAT affirmed the decision under review