

Special benefit: school student

SPOONER and SECRETARY TO DSS
(No.N85/198)

Decided: 26 July 1985 by B.J. McMahon, J.H. McClintock and G.D. Grant.

Mark Spooner left his parent's home in June 1984, when he was 15 years of age. In March 1985, when he was living in a youth refuge in Wollongong (an area with particularly high unemployment) and attending year 10 at a local secondary school, he claimed special benefit from the DSS. When that claim was rejected, he sought review from the AAT.

The legislation

Section 124 (1) of the *Social Security Act* gives the Secretary to the DSS a discretion to grant a special benefit to a person who is not receiving a pension or qualified to receive another benefit under the Act, if the Secretary

'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).'

The applicant's situation

Spooner had no assets nor any regular income. His attempts to obtain part-time work had been unsuccessful. He was not eligible for a secondary school allowance (this was limited to students in years 11 and 12) or for any other form of income support under the *Social Security Act*.

He had received 8 emergency cash grants from a State department (YACS); but YACS could not guarantee that he would receive any future payments, which were not payable as of right and depended on YACS' current budget. (Spooner's application for a cash payment to cover the purchase of underclothing was awaiting a decision by YACS at the time of this review.)

Spooner was attending secondary school so that he could obtain his School Certificate and obtain an apprenticeship at the end of 1985. It was not practicable for him to return to his parent's home (because of the friction between him and his parents). Nor was he prepared to transfer to a part-time night course because this would delay his completion for a further 12 months and he would lose the advantage of the contacts made at his secondary school. (These contacts were particularly valuable because they offered him the prospect of good references.)

The DSS position

The DSS had refused to grant a special benefit to Spooner because, in its view, Spooner could take legal proceedings against his parents for support; he was receiving a 'sufficient livelihood' from YACS; and he could leave school and obtain employment.

'Unable to earn . . .'

The AAT concluded that Spooner was a

person who was 'unable to earn a sufficient livelihood' within s.124(1) and therefore eligible for the exercise of the Secretary's discretion under that section.

His inability to earn was a product of his age -

'[P]ersons aged 16 who are full-time school students are not normally expected to support themselves through paid employment.'

(Reasons, p.10)

Furthermore, Spooner's inability to earn could be attributed to 'domestic circumstances':

'The difficulties that the applicant has found with his family, leading to a break down of their relationship and to his consequent impoverishment must be of the essence of domestic circumstances . . . "Domestic" can refer to relationships with one's family even if one does not live with them.'

(Reasons, pp.10-11)

The AAT rejected the suggestion that Spooner take legal action against his parents, saying that the social security system treated claimants as 'single units in society' and that the Secretary -

'is in no position to attempt to coerce third parties to honour their obligations, legal or otherwise . . . The structure of social security is to take its applicants as it finds them and to provide succour and assistance to a person finding himself in need, no matter how that need arose . . . It is not reasonable to expect the applicant unwillingly to take legal proceedings against his parents. Assume they do and for whatever reason decline to do so. The respondent must accept this.'

(Reasons, p.12-14)

Support from YACS was, the AAT said, not within Spooner's control. These payments were unpredictable and discretionary; and to require Spooner to depend upon them would be unreasonable. Moreover, the establishment of a comprehensive, national income support system in the *Social Security Act* meant that the Commonwealth was primarily responsible for income maintenance of those in need:

The Commonwealth is charged with the basic, recurring, organised support of those in need, with the systematic alleviation of poverty and with the structural support of a minimum level of existence of all Australians. This responsibility cannot be avoided by reliance on the limited, irregular and variable help afforded by States to those whose regular welfare is the prime concern of the Commonwealth.'

(Reasons, p.16)

Finally, the AAT said that it would be unreasonable to expect Spooner to leave school and continue his studies part-time while working: it was, the AAT

said, most doubtful whether he could find a job without a School Certificate.

The discretion

The Tribunal then turned to the question whether the discretion in s.124(1) should be exercised in Spooner's favour.

The Act reflected, the AAT said, 'a general policy that public support should be given to or in respect of children kept at school.' Sections 18A, 59A, 83AAB, 84, 94, 105H and 106(1) extended the definition of child (for whom income security payments could be made) to include a full-time student between 16 and 25 years of age:

All these sections establish a pattern of support for full-time student children. They point to a policy not to require children to leave school to enter the workforce but to assist in their support so that they may obtain an adequate education. The Parliament has deliberately and repeatedly taken the view that it is in the public interest to spend public welfare funds rather than encourage young people to leave their educational institutions.

This policy is a matter that the respondent should take into account in exercising his discretion in the applicant's favour.'

(Reasons, p.20)

The AAT pointed out that, if Spooner were denied a special benefit, he would either have to live in an institution or leave school (and go on to unemployment benefits). If he lived in an institution, the cost to the community would be substantial; and the respondent could properly take that extra cost into consideration.

Finally, the AAT said, it was relevant to consider that Spooner's need was temporary:

He has a temporary need for financial support in special circumstances during a crisis period in his life, which will pass within a relatively short time. These are exactly the types of circumstances envisaged for special benefit payments.

It would be a personal disaster for the applicant and a loss to this community of a promising and potentially useful citizen if, through the wrong decision, he was forced into a situation of abandoning his hopes for qualifications or (worse) was levered on to the treadmill of unemployment benefits while still unqualified.

In our view, for these reasons, the respondent's discretion ought to be exercised in favour of the applicant.'

(Reasons, p.22)

Formal decision

The AAT set aside the decision under review and remitted the matter to the Secretary with a direction that Spooner be paid a special benefit from the date of his application in March 1985.