

Administrative Appeals Tribunal decisions

Income: 'earned, derived or received'?

SAS and SECRETARY TO DSS
(No. S85/102)

Decided: 6 March 1987 by J.A. Kiosoglous and J.T.B. Linn

Igor Sas applied to the AAT for review of a DSS decision to raise an overpayment of unemployment benefit. The amount sought by the Department was \$855.40.

The applicant had been in receipt of unemployment benefit when he undertook voice over work for radio and T.V. commercials. This was done on a casual basis over 3 months. He did not notify the Department when he did the work although he did advise them when he received payment for the work.

Was there an overpayment?

Section 140(1) of the Social Security Act provided that where a payment occurred as a result of a failure to comply with a provision of the Act then the amount so paid became a debt due to the Commonwealth. Section 114 provided for the reduction of the rate of unemployment benefit where a recipient's income exceeded a certain amount. The Act also imposed an obligation to notify changes in income.

The issue was whether the applicant had received income thus imposing on him an obligation to notify the Department. This depended upon the definition of 'income'.

Section 6 defined 'income' to mean 'personal earnings, moneys, valuable consideration or profits earned, derived or received by that person.'

Was there money 'earned, derived or received'?

The applicant argued that he had not earned, derived or received the money for the voice-over work until he had actually received payment. The AAT accepted that submission.

The Tribunal referred to Sharp (1986) 33 SSR 426 where the AAT said that a person may be considered to have earned or derived money when they have a present legal entitlement to the money. By that the AAT said it was meant that

'there must in here in the future recipient of the moneys in question, a legal right to insist upon payment, and if necessary, to initiate legal proceedings to recover those moneys at the time of alleged "deriving" or "receiving".'

(Reasons, para.9)

To determine whether such a right existed for the applicant it was necessary to examine the contracts between him and the studios for which he did the work. Upon examination of the contracts the AAT concluded that payment was subject to various contingencies such as client approval and the use to which the tape would be finally put. As a result the amount actually received by the applicant could vary between each job. It could thus not be said that the applicant had any legal right to insist upon payment prior to actual receipt of the money.

As a result the AAT concluded that the applicant did not earn or derive the money until he had actually received it. Thus he had not failed to comply with the Act, having notified the DSS when he received the money. There was no overpayment made to the applicant.

Formal decision

The AAT set aside the decision under review.

Unemployment benefit: students

CRUGNALE AND SECRETARY TO DSS

(No. W86/236)

Decided: 16 March 1987 by J.O. Ballard

The AAT affirmed a DSS decision to refuse unemployment benefit to a university student. The Tribunal found that the applicant had a greater commitment to completing her university studies than obtaining work. This view was supported by evidence that suggested that during the academic year she was trying to obtain employment that was compatible with the times that she was required to attend university, such as work as an usherette which had been entered on her CES card.

Having regard to the criteria set out in Long (1986) 29 SSR 361 for assessing full-time students for unemployment benefit - the amount of time demanded by the course, the manner in which the course demands cut across the applicant's availability for full-time paid employment and the length of time that the applicant had spent in the course of study - the Tribunal could not describe the applicant as eligible for the benefit.

The applicant is described by the interviewing officer as 'Attractive, slim girl; excellent presentation and very well spoken; would be suitable to public contact.' In evidence she made it clear that she intends to get her degree in order to improve her situation in life. I am quite sure she is not the sort of person who would take up unskilled employment as an usherette or a waitress as a lifestyle and that her intention to get work, while genuine, was related only to work she could consistently do while continuing with her studies. That does not entitle her to unemployment benefit.

(Reasons, para.7)

HANSEN and SECRETARY TO DSS

(No. S86/17)

Decided: 6 March 1987 by J.A. Kiosoglous

The applicant lodged a claim for unemployment benefit in March 1985. This claim was rejected by the DSS on the basis that the applicant was committed to his studies and so could not satisfy the work test in s.107 of the Act. The applicant asked the AAT to review the decision.

The legislation

Section 107(1)(c) of the Act provides that a person is eligible to receive unemployment benefit if they are 'unemployed', 'capable of undertaking and willing to undertake work' and during the relevant period they have taken reasonable steps to obtain work.

The facts

In 1985 the applicant enrolled in the two subjects he required to complete the second year of the science degree he commenced in 1983. He was rejected for TEAS as his workload was insufficient and he subsequently applied for unemployment benefit. During 1985 the applicant had periods of employment that totalled 7 weeks as well as a two month period of employment over the summer vacation. In 1986 the applicant enrolled in the third year of his course as a full-time student. He worked casually as a service station attendant in that year.

Commitment to full-time study?

The AAT referred to the Federal Court decision in *Thomson* (1981) 38 ALR 624 where it was said that students were not to be treated differently to other people in the application of s.107. Whether a student