

Administrative Appeals Tribunal decisions

Income test: 'income'

ALNES and SECRETARY TO DSS
(No. V87/133)

Decided: 8 September 1987 by
H.E. Hallowes, L.S. Rodopoulos and
R.W. Webster.

The AAT affirmed a DSS decision to treat a Norwegian pension received by Mrs Alnes as 'income' for the purposes of the *Social Security Act*, and to reduce the rate of her widow's pension accordingly.

The Norwegian pension, known as a 'Nortraships pension', was paid to Mrs Alnes because her late husband had served as a member of the Norwegian merchant navy in World War II. This pension was paid monthly, and its amount was set by the Norwegian authorities on account of Mrs Alnes' income (including her Australian widow's pension).

Section 63(2) of the *Social Security Act* provided, at the time of the deci-

sion under review, that the rate of a widow's pension was to be calculated by reference to the pensioner's 'income', a term which was defined in s.6(1) of the Act to mean -

'personal earnings, moneys, valuable consideration or profits earned, derived or received . . . from any source whatsoever, within or outside Australia, and includes a periodical payment by way of gift or allowance . . .'

The AAT said that the Norwegian pension clearly fell within the definition of 'income': it amounted to 'moneys received by Mrs Alnes for her own use from outside Australia'. The pension payments could also be described as a 'periodic payment'. The AAT made the following comments:

'7. The *Social Security Act* is welfare legislation which makes provision for those in need in the Aus-

tralian community taking into account their other means of financial support. The definition of "income" in sub-section 6(1) of the Act has a very wide ambit although there are some exemptions. However, if a payment does not fall within the meaning of one of the exemptions, the payment must be taken into account in calculating the rate of pension payable to the applicant. The Tribunal appreciates the frustration of overseas organisations who, having made payments to people who suffered as a result of World War II, see the financial position of the recipients of those payments remaining the same due to the diminution of their income from the Australian Social Security system.'

Unemployment benefit: student

WILLIAMS and SECRETARY TO DSS

(No. S87/38)

Decided: 22 May 1987 by J.A. Kiosoglous

Arthur Williams applied to the AAT for review of a DSS decision to refuse him unemployment benefit.

The facts

The applicant completed his undergraduate studies at the end of 1985 and commenced to receive unemployment benefits. In March 1986 he took up study for a postgraduate degree and his unemployment benefit was stopped. His study was commenced on a part-time basis and he received about \$96 per week as a part-time research assistant. In July 1986 he lodged a claim for unemployment benefit which was refused. It was this decision that led to the application to the AAT.

The applicant said that he had become discontented and began to look for full-time employment. He also stated that if he had found full-time work he would have given up his study and the part-time work which was tied to his study.

The legislation

Section 107(1) [now s.116(1)] of the *Social Security Act* requires that an applicant for unemployment benefit be unemployed, capable of undertaking and willing to undertake paid work which was suitable for that person,

and must have taken reasonable steps to obtain such work.

What was the applicant's intention?

The Tribunal turned to the intention of the applicant to ascertain whether he could be described as willing to undertake paid work.

The AAT could say that the applicant was prepared to abandon his studies if work which he wanted came along and that the applicant wanted a break from his studies. However, the Tribunal also found that there was some indecision on the part of the applicant. This was evidenced by his application for a Post-Graduate Award for 1987. But in earlier decisions the AAT had given the benefit of the doubt in such cases to the applicant. (see *Hutchins No. N85/564*).

Had the applicant taken reasonable steps to obtain work?

Having satisfied part of the requirements of the work test the Tribunal considered whether the applicant had taken reasonable steps to obtain suitable work.

The applicant had wished to have a break from the science area in which he was formally qualified. For that reason he had only applied for unskilled jobs. This, said the Tribunal, meant that the applicant had not taken reasonable steps to obtain 'suitable work'.

'The range of jobs for which he applied was very limited having regard to the applicant's skills and

education. The unemployment benefit is not designed for people who cannot find the work which they prefer for whatever personal reason. It is designed for people who cannot find any suitable work. The applicant has skills which render him suitable for many types of occupations but he did not make himself available for such work.'

(Reasons, para.13)

Finally, the AAT was not satisfied that the applicant had taken reasonable steps to obtain work. He had limited himself to perusing the Saturday classifieds and had not been diligent in following up possible vacancies at the CES.

Formal decision

The Tribunal affirmed the decision under review.