

not payable to a person if the person is

'confined in a psychiatric institution, whether by order of a court or otherwise, in consequence of having been charged with the commission of an offence . . .'

After the SSAT had rejected Shelley's appeal (in April 1989), the Queensland Mental Health Review Tribunal set aside the order for his detention under s.50(1)(a) of the *Mental Health Services Act*. The police then, on 30 June 1989, charged Shelley with the offence of threatening the life of Michael Ahern and he was released on bail.

The DSS advocate conceded that, during the period from December 1988 to June 1989, Shelley had been detained under s.50 of the *Mental Health Services Act*, and not 'in consequence of having been charged with the commission of an offence'. It followed that 167(3)(b)(ii) of the *Social Security Act* did not prevent payment to him of sickness benefit.

Formal decision

The AAT set aside the decision under review and remitted the matter to the Secretary for re-assessment in the light of the finding that Shelley's confinement in a psychiatric institution had not been in consequence of having been charged with the commission of an offence.

[P.H.]



Unemployment benefit: part-time student

RYDER and SECRETARY TO DSS
(No. 5757)

Decided: 28 February 1990 by
T.E. Barnett.

Clayton Ryder re-enrolled for 3 units in a Bachelor of Engineering course at the W.A. Institute of Technology (WAIT) in December 1985. He applied for and was granted unemployment benefit in February 1986, after indicating on his claim form that he was a part time student.

On 25 March 1986, Ryder enrolled for 3 additional units in the course.

According to WAIT, this amounted to 16.75 hours of classes a week, and he was classified by WAIT as a full time student.

Ryder continued to receive unemployment benefit until August 1986, indicating on his applications for continuation of benefit that he was a part time student. In August 1986, the DSS investigated an anonymous telephone call, decided that Ryder had not been eligible for unemployment benefit, cancelled the benefit and decided to recover all payments since 3 March 1986 (\$1839).

The legislation

At the time of the decision under review, the relevant legislation was s.107 [now numbered s.116] of the *Social Security Act*. (The current s.136, which disqualifies full time students from receiving unemployment benefit, was not then in force.)

According to s.107(1), a person would qualify for unemployment benefit if, *inter alia*, the person satisfied the Secretary that 'he was unemployed and was capable and willing to undertake [suitable] paid work' and that 'he had taken . . . reasonable steps to obtain such work.'

The evidence

Ryder told the AAT that he had enrolled in the engineering course, under family pressure, in the 1985 academic year. He had failed 3 units. He then intended to abandon the course, but the Engineering Department at WAIT re-enrolled him in the 3 failed units. So he decided to complete those units while looking for employment. At the end of March 1986, he enrolled for 3 further units to improve his employment prospects.

Ryder said that he did not attend classes in the 3 units he was repeating, so that his class contact time was only 9 hours a week, even after enrolling for the 3 extra units. Accordingly, he had regarded himself as a part time student, even when enrolled for 6 units.

Throughout the first semester (March to June 1986), Ryder sought employment in the surveying and laboratory technician fields, in which he had skills and experience.

When he passed all 6 units in August 1986, he decided to commit himself to the course; and he enrolled for the second semester as a full time student and advised the DSS of his change of status.

The AAT's assessment

The AAT accepted Ryder's evidence and concluded that he had not

deliberately supplied false or misleading information to the DSS, nor had he deliberately withheld information.

Although he had limited his attempts to obtain work, that limitation (to surveying or laboratory technician work) was reasonable, the AAT said.

As soon as Ryder had decided to commit himself to his studies, and was accepted as a full time student (on 13 August 1986), he ceased to be capable or willing to undertake paid work. As he had immediately notified the DSS and this had coincided with the cancellation of his benefit, there had been no overpayment.

Formal decision

The AAT set aside the decision under review and remitted the matter to the Secretary with the direction that Ryder had been qualified for unemployment benefit between 2 March and 8 August 1986.

[P.H.]

