

pension would cease. She had made a deliberate decision not to advise the DSS of her relationship with L.

Waiver

The AAT said that, although L's immigration status had placed her in a dilemma, her circumstances did not justify an exercise of the discretion to waive recovery of any part of the overpayment received by her. That discretion was conferred by s.1237 of the *Social Security Act 1991* and was limited by the Minister's Notice, issued under s.1237(3) of the Act. In particular, there were not, in this case, sufficient "special circumstances" to justify waiver of recovery.

Formal decision

The AAT set aside the SSAT's decision and substituted a decision that the overpayment of supporting parent's benefit made to Burwell was recoverable.

[P.H.]



Overpayment: waiver and write-off of recovery

HODGSON and SECRETARY TO DSS

(No. 7903)

Decided: 13 April 1992 by T.E. Barnett.

Between November 1986 and August 1988, Geoffrey Hodgson received payments of unemployment benefit. These payments were made because Hodgson had concealed the fact that he was employed.

In May 1989, the DSS decided that Hodgson was indebted to the Commonwealth under s.246 of the *Social Security Act 1947* because he had received payments in consequence of his false statements. The DSS demanded that Hodgson repay the debt.

Hodgson was subsequently prosecuted on 43 charges of obtaining unemployment benefit which was not payable and making false statements contrary to s.239(1) of the *Social Security Act 1947*. He pleaded guilty and was sentenced to a term of impris-

onment. The sentencing court made a reparation order in the amount of \$14 380.86.

While still in prison, Hodgson appealed to the SSAT against the DSS decision to recover the debt arising under s.246. The SSAT affirmed the DSS recovery decision to recover the debt and refused to exercise the Secretary's discretion, conferred by s.251 of the 1947 Act, to waive recovery of the debt.

Hodgson applied to the AAT for review of the SSAT's decision. At the time of the hearing, Hodgson was still in prison.

Jurisdiction

The AAT referred to the decisions in *Mariot* (1992) 66 SSR 937 and *Ibbotson* (1992) 67 SSR 953; and said that the DSS decision to recover the debt to the Commonwealth arising as a result of Hodgson's actions had also involved a decision not to write off or waive recovery of the debt.

Waiver

The AAT noted that the discretion to waive recovery was conferred by s.1237 of the *Social Security Act 1991*, and was exercised in accordance with the Minister's Notice of 8 July 1991. The AAT noted that Hodgson had received moneys to which he was not entitled as a result of making false statements. He had been convicted of criminal offences and served a sentence of imprisonment. The sentencing court had ordered reparation.

On the other hand, Hodgson suffered a serious disease of thrombosis and his health was so poor that he was unlikely to be able to work again. His wife and 2 young children had suffered considerable hardship as a result of his imprisonment.

Hodgson had substantial debts and to face him with the prospect of repaying the outstanding amount, \$12 748.86, would 'add a crushing burden and there is no realistic possibility that the amount could be recovered'. But there were strong policy reasons why it would be inappropriate to waive the whole of the outstanding sum in view of the criminal activities which led to the overpayment.

The AAT decided to waive \$6748.86 of the debt and write off the balance for 3 years, after which the DSS could seek recovery by instalments. This would give Hodgson a 'breathing space . . . to let him try and improve the welfare of his family'.

Formal decision

The AAT decided to waive \$6748.86 of the overpayment; write off \$6000 of the balance for 3 years; direct the Secretary to re-assess the recovery of the balance in the light of the circumstances existing at that time; and allow each party liberty to apply on the question of recovery of the balance.

[P.H.]

[Editors' note: See Federal Court decision on appeal from the AAT, p.983 of this issue.]



Recovery of overpayment: Minister's discretion

SECRETARY TO DSS and RIDDELL

(No. 7913)

Decided: 24 April 1992 by B.G. Gibbs, N.J. Attwood and E.H. Stephenson.

The DSS applied to the AAT for review of a SSAT decision to waive the balance of a supporting parent's benefit debt owed by Mrs Riddell.

The facts

A debt of \$8163 was raised against Mrs Riddell in September 1985 because she was living in a *de facto* relationship which affected her entitlement to supporting parent's benefit. She accepted that she owed this amount and deductions were made from her family allowance payments.

In October 1990, Mrs Riddell asked the DSS to waive the balance then owing of \$4250.85 under s.251 of the 1947 Act. She made this request on the basis that she was suffering extreme financial hardship which was being compounded by the repayments to the DSS. The request was rejected.

Should recovery be waived?

As the debt was not disputed the issue was whether recovery should be waived. Section 1237 allowed waiver of the debt or part thereof in accordance with Ministerial directions. [The relevant extracts from the Ministerial directions are reproduced in VXC, reported in this issue.]