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Opinion

Reducing employment prospects by moving residence

The Federal Court's decision in *Clemson* (p.1030) has confirmed the relatively narrow impact of s.116(6A) and s.126(1)(aa) of the 1947 Act. These provisions, the Court said, only applied to deny unemployment benefits to those people who moved to a new place of residence at a time when benefits were otherwise payable. As benefits were not payable until after a claim was made (s.125(1)), it followed that a move could only bring the provisions into operation where the move occurred after the making of a claim.

How relevant is the decision to the equivalent provisions in the 1991 Act, dealing with job search allowance (JSA) and Newstart allowance?

If we take JSA as an example, s.518 is in substantially the same terms as the previous s.116(6A) and would, therefore, presumably operate only to disqualify a person from eligibility for JSA on the very day on which the person moved to a new place of residence.

For JSA, the 1991 equivalent of the former s.126(1)(aa) is s.550, expressed in substantially the same terms as the former provision, imposing a 12-week non-payment period on those who reduce their employment prospects by moving residence. But the 1991 Act contains a new limitation in payment, s.562, which declares that job search allowance becomes payable on the first day on which (a) the person is qualified and (b) no provision of the Act makes the allowance not payable to the person. (The 1947 Act simply provided, in s.125(1), that unemployment benefit was payable from the seventh day after a claim or after the claimant became unemployed, whichever was the later.) In combination, ss.550 and 562 might be read as applicable to a person who moved residence before the allowance was payable to the person.

It could be objected that such a reading of ss.550 and 562 begs the critical question: in what circumstances does s.550 make JSA not payable? A further difficulty would be to identify the date from which the 12-week non-payment period, prescribed in s.550, is to run. Another difficulty would be raised by the general assumption that the 1991 Act did not intend to achieve significant changes in policy.

Disability payments

One of the first AAT decisions on sickness allowance (introduced from 12 November 1991) is noted in this issue – *Dicker* (p.1027). The AAT discussed the concept, used in relation to sickness allowance, of 'work of a kind that the person could . . . be reasonably expected to do'; and said that the person's experience and qualifications controlled this concept. In addition, the AAT said, it had to take account of the person's ability to attract an employer who might offer special conditions of employment accommodating the person's incapacity. That approach is, of course, reminiscent of the approach taken to assessing incapacity for work in relation to the former invalid pension, now replaced by disability support pension (DSP).

To date, no DSP cases have been decided by the AAT (although one was heard in January 1993). The test of eligibility is framed in quite narrow terms (does the person's impairment by itself prevent the person from doing her or his usual work, or work for which she or he is skilled?). It remains to be seen whether the broader approach adopted in *Dicker* will influence the approach taken in relation to DSP.

[P.H.]

Responsibility for any election comment in this issue is taken by Peter Hanks, 2 Alfred Square, St Kilda.

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