

an appropriate case to exercise that power.

The AAT decided that a stay order was not appropriate. In coming to that conclusion, the AAT dealt with 2 considerations: Trewin's prospects of success in her substantive appeal; and the hardship to her in allowing the DSS to continue to recover \$39 a fortnight.

The AAT said that, although Trewin appeared to have an arguable case on her appeal, it was not possible to assess her chances of success, because they largely depended upon issues of credibility.

So far as hardship was concerned, the AAT noted that Trewin was now living with her mother and other relatives and could not afford to find her own accommodation. Her living arrangements were unsatisfactory, but she did have a place to live. The hardship was:

'not such that review of the decision would be pointless unless an order for stay or another order affecting the operation or implementation of the decision were made.'

(Reasons, para. 32)

Formal decision

The AAT refused to grant an order staying or otherwise affecting the operation of the decision under review.

[P.H.]

SSAT's review jurisdiction

SECRETARY TO DSS and
KARAVOKYRIS
(No. 8977)

Decided: 7 September 1993 by
J. Handley.

Mr and Mrs Karavokyris claimed disability support pension (DSP). A delegate of the Secretary rejected their claims because one of them had received a lump sum payment of compensation; and they were precluded from receiving pension for the 'preclusion period'.

Mr and Mrs Karavokyris then advised the DSS that they wished to appeal against the rejection. A DSS officer referred the appeals simultaneously to an authorised review officer (ARO) and to the SSAT.

The SSAT registered the appeals as applications for review under s.1247(1) of the *Social Security Act* 1991. One week later, the ARO affirmed the delegate's decision to refuse the claims for pension.

Six weeks after the decision of the ARO, the SSAT conducted its review, leading to a decision to reduce the preclusion period. The DSS asked the AAT to review the decision of the SSAT.

The legislation

Section 1165(2) of the *Social Security Act* 1991 provides that, if a person is qualified for (amongst other payments) DSP and the person is a member of a couple and the person or the person's partner receives lump sum compensation, then DSP and certain other payments are not payable to the person or the person's partner during the lump sum preclusion period.

Section 1247(1) of the Act provides that if the Secretary or an authorised review officer has, under s.1243 of the Act, reviewed a primary decision, a person whose interests are affected by the decision may apply to the SSAT for review of the decision of the Secretary or the authorised review officer.

No jurisdiction in SSAT

The AAT found that the SSAT had lacked jurisdiction to review the delegate's decision — for 2 reasons.

First, the AAT said that an application to the SSAT could only be made for review of a decision made under s.1243 by the Secretary or an ARO. Such an application to the SSAT could not be made before the decision to be reviewed had been made. Here, the application to the SSAT had been made before the ARO's decision.

Although the absence of an application for review of a decision might be cured through the applicant making oral application to the SSAT under s.1257 of the Act after the s.1243 decision of the ARO, there was no record of Mr and Mrs Karavokyris having made such an oral application.

Second, the AAT said that a person could only be precluded from receiving a pension under s.1165(2) of the *Social Security Act* if the person had a qualification for pension in the first place. Here, the delegate had not dealt with the question of qualification for DSP but had decided that, in any event, DSP could not be paid during the preclusion period as Mr and Mrs Karavokyris were precluded from receiving DSP by the operation of s.1165(2). The AAT concluded:

'The decision therefore to preclude a pension for which qualification has never been established is a decision which in my view is incapable of review because it is made outside the operation of the legislation.'

(Reasons, para. 6)

A person could not be precluded, the AAT said, from receiving a pension for which qualification had not been as-

sessed. The delegate should have made a decision as to qualification for DSP and then considered whether Mr and Mrs Karavokyris were precluded from receiving DSP by the operation of s.1165(2).

Formal decision

The AAT decided that the SSAT had lacked jurisdiction; and remitted the matter to the Secretary for reconsideration.

[P.H.]

[Editor's note: The AAT suggests that, quite apart from the circumstance that the application to the SSAT was premature, the SSAT did not have power to review an invalid decision. The AAT did not discuss cases such as *Collector of Customs v Brian Lawlor Automotive Pty Ltd* (1979) 2 ALD 1, *Secretary to DSS and Sinclair* (1992) 66 SSR 939; *Anderson and Secretary to DSS* (1992) 70 SSR 998 which held that the AAT has power to review a decision made in purported exercise of power conferred by an Act even if the decision is invalid.]

Recipient notification notice: strict compliance

SECRETARY TO DSS and
CARRUTHERS
(No. 9086)

Decided: 29 October 1993 by D.F.
O'Connor J, M. Allen, H. Julian.

Marie Carruthers was receiving supporting parent's benefit. In August 1988, she was transferred to widow's pension.

In December 1991, the DSS decided that Carruthers had been overpaid \$24,360.70, between March 1989 and December 1991, because she had received payments of pension not payable to her; and the receipt of those payments was in consequence of Carruthers' failure to comply with notices given to her (requiring her to report any income she received).

On review, the SSAT set aside that decision. It decided that the notices given to Carruthers had not been valid notices under the *Social Security Act* 1947; so that no overpayment had arisen in consequence of her failure to comply with her obligations under the Act.

The Secretary appealed to the AAT.

The legislation

Section 246(1) of the *Social Security Act* 1947 provided that, where pension was paid in consequence of a failure or omis-