

AUSTUDY can be paid. Regulation 60 specifies three types of living allowances: independent, away-from-home, and standard. Regulation 77 sets out who may receive the away-from-home living allowance. This includes a student who is not living with a parent and is an isolated student 'of one of the following kinds: (a) isolated home, as described in regulation 78'. The principle home of a student's parent is isolated if the criteria set out in regulation 78(1) apply.

Isolated home

Regulation 78(1) provides: 'The principle home of a student's parents is isolated if the conditions opposite one of the items in the following table apply to the home'.

The Tribunal noted that Newton-Tighe did not satisfy items(2), (3) or (5) of the table in regulation 78. It focused on items (1) and (4), which provide that the home of a student's parents is isolated if either the school is 16 km or more from the home and there is more than 4.5 km distance from public transport between the home and the school, or the distance between the home and school is more than 8 km and it is impracticable for the parents to drive the student to school. These conditions must be permanent or for 30 days or more each term.

The Tribunal noted that those two conditions turned on the phrase 'distance from public transport between home and school'. The distance between the school bus and Newton-Tighe's home was only 2.4 km, less than that required in regulation 78. But Newton-Tighe argued that she satisfied these conditions either permanently or on at least 30 school days during 1994. This was due to the fact that no school bus could collect her in time to reach her 8 a.m. lessons two days a week. This was a permanent condition and applied for more than 30 or more school days a year.

The Tribunal looked in detail at the definition of public transport and 'whether regard should be had only to public transport that operates on a schedule that can get her to and from school at a time to fit in with the school's timetable': Reasons, para. 17.

In relation to the definition of public transport, the Tribunal looked at dictionary meanings, relevant case law and in particular the *Passenger Transport Act (NSW)*. It concluded that as the provisions of the *Passenger Transport Act* apply to non-commercial contracts, and the contractor on this bus route carries passengers other than school children over a fixed route and according to a regular schedule, he is operating his bus as public transport.

The Tribunal agreed that the public transport available would not enable Newton-Tighe to attend the lessons she wanted to, and that this was a permanent position. However the Tribunal concluded that regulation 78(1) does not allow

'account to be taken of the bus schedule and whether or not it does not enable a student to use it and to reach school in time for lessons on a particular day or days. It is concerned only with the measurement of distance . . . public transport of which account is taken under sub-regulation 78(1) must be public transport which travels between the home of the student's parent or parents . . . and the school'.

(Reasons, paras 24 and 25)

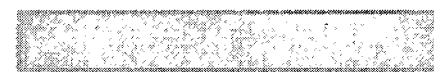
The Tribunal then considered the issue of duration. The distance may be greater than the specified distances either for a permanent duration or on at least 30 days during term time because of special weather conditions. The period of at least 30 days relates specifically to weather conditions. In relation to the duration described as 'permanent', the Tribunal considered that 'the distance of the public transport from the home must be more than the specified distances on a continuing (i.e. abiding) basis . . . more than simply on a day or two a week': (Reasons, para 29).

The Tribunal concluded that Newton-Tighe's parents' home was not a distance of either 4.5 or 8.0 kilometres or more from public transport on a permanent basis. Consequently she did not satisfy the criterion in either item (1) or (4) of regulation 78(1) and was not entitled to an away-from-home allowance.

Formal decision

The decision under review was affirmed.

[M.A.N.]



Minimum time to complete a course: concession for previous study

GRAY and SECRETARY TO DEET (No.10778)

Decided: 1 March 1996 by T.E. Barnett.

Gray sought a review of the SSAT decision that she was ineligible for AUSTUDY in 1995, as her previous studies amounted to the minimum time needed to complete a course at that level.

The legislation

Regulation 41 of the AUSTUDY Regulations refers to previous study. It states that a student can only get AUSTUDY if the time already spent studying at the same tertiary level is less than the minimum time needed to complete the course plus an additional period of 6 or 12 months. The additional period is only available for courses lasting more than a year. An additional 6 months is allowed if the student is enrolled in semester units, and an additional 12 months is allowed if the student is enrolled in full year units, or needs to pass a year's work to progress in the course.

Regulation 47 contains a concession to this rule. It provides that no account will be taken by DEET of an earlier course, if completion of that course is the normal requirement for the current course.

The facts

Gray completed a 4-year Bachelor of Arts degree in 1994. In 1995 she enrolled in a Bachelor of Arts (Music Theatre) course, and lodged an application for AUSTUDY.

She claimed that her first degree was a normal requirement for admission to the 1995 course. This, she argued, entitled her to benefit from the concession in Regulation 47. The Director of the institution where Gray had enrolled to do the 1995 course, gave evidence that students who enrolled in the course were expected to have prior work or academic experience. Of those who had enrolled 60% or 70% had graduated from other courses, but one-third did not have a prior degree.

The AAT noted that the university handbook listed the academic requirements for admission to the course as Tertiary Entrance Examination, mature age entry, TAFE qualifications or Aboriginal student entry.

The findings

The AAT found that Gray was ineligible for AUSTUDY pursuant to Regulation 41 as she had already studied for 4 years at the bachelor degree course level.

The AAT considered whether the concession in Regulation 47 applied to Gray. It reviewed the definition of 'normal requirement' and stated that it refers to:

'the usual or typical obligation that must be complied with. It refers to an obligation that is normally or usually complied with and not simply a desire or wish that may be followed.'

(Reasons, para. 13)

It was noted by the AAT that one-third of the students enrolled in the 1995 course did not have prior degrees.

The AAT concluded from the evidence that a degree was not a normal requirement for Gray's 1995 course.

Formal decision

The AAT affirmed the decision under review.

[A.A.]

Student workload: waiver of overpayment

GEAR and SECRETARY TO DEET (No.10749)

Decided: 15 February 1996 by D.W. Muller.

Gear sought a review of a decision of the Student Assistance Review Tribunal (SART) that, due to her part-time status, she was ineligible for AUSTUDY in semester 1 of 1994 and had incurred an overpayment of AUSTUDY of \$1507.74.

The facts

Gear commenced a Bachelor of Nursing degree in 1993. She failed a unit in 1993 which was a prerequisite for her to proceed to do the usual second year subjects.

Gear sought assistance from her course co-ordinator to restructure her 1994 studies. She told him that she had to be a full-time student to receive AUSTUDY, and she was assured that the proposed course amounted to full-time study.

Gear's original application for AUSTUDY on which she had listed the subjects she had enrolled in was lost by DEET. She was asked to complete a new application form and was told by DEET not to worry about listing her subjects.

When Gear received her 1994 student card it designated her as a part-time student. She spoke to her course co-ordinator, enrolled for an additional subject, and was told by university staff that she was a full-time student. She was given a full-time student card for 1994. Gear notified DEET that she had enrolled in an additional unit.

DEET carried out an enrolment check in June 1994 and found that Gear was enrolled in 4 subjects having a HECS loading of 0.29. The normal full-time semester workload carries a HECS loading of 0.5.

DEET decided that Gear had not been a full-time student in semester 1 of 1994 and must refund the AUSTUDY she had received.

The issues

The issues before the AAT were whether Gear was entitled to AUSTUDY in 1994, whether she had to repay the overpayment of \$1507.74 and whether there were grounds to waive the overpayment.

The legislation

Regulations 34 and 35 of the AUSTUDY Regulations deal with workload and state that a tertiary student must study full-time. The Regulations provide that to be full-time, a student must be enrolled in and undertaking at least three-quarters of the normal amount of full-time work for the purposes of HECS.

Section 289 of the *Student and Youth Assistance Act 1973* sets out a number of grounds under which a debt can be waived. Section 289(2) provides for

waiver if the debt arose solely because of an administrative error made by the Commonwealth and the person received the payments in good faith.

Workload

The AAT found that Gear was not a full-time student as she was not enrolled in and undertaking 75% of normal work for a full-time student. Gear's HECS loading was 0.29 which fell below the 75% HECS loading of 0.375. Thus she was not entitled to AUSTUDY.

Waiver

The AAT heard this case in September 1995 and decided it in February 1996. The waiver provisions were amended from 1 January 1996. The AAT applied the law as it stood at the time of the hearing.

The AAT stated that Gear was not to blame for the overpayment. It dismissed DEET's argument that their staff process 11,000 AUSTUDY applications each year and could not be expected to check each application individually. On the basis that Gear had received AUSTUDY to which she was not entitled due to the administrative error of DEET, and that she had received the money in good faith, the AAT waived the debt.

Formal decision

The AAT set aside the decision under review and waived the right of the Commonwealth to recover the AUSTUDY payments made to Gear in semester 1 of 1994.

[A.A.]

[Editor's note: The AAT did not explain what the administrative error committed by DEET was, other than to find that Gear was not to blame for the overpayment.]