SSAT decisions

Important note: Decisions of the Social Security Appeals Tribunal, unlike decisions of the Administrative Appeals Tribunal and other courts, are subject to stringent confidentiality requirements. The decisions and the reasons for decision are not public documents. In the following summaries, names and other identifying details have been altered. Further details of these decisions are not available from either the Social Security Appeals Tribunal or the Social Security Reporter.

Health care card: 'ascertained income'

DM and SECRETARY TO DSS

Decided: 26 March 1996.

DM appealed against the DSS decision to reject her application for a health care card because she was not a 'disadvantaged person' within the meaning of s.5B of the *Health Insurance Act 1973*. DM's income was considered to be too high.

When DM's income was combined with her husband's, their combined income exceeded the limit for a disadvantaged person. The issue was whether the DSS was correct in including her husband's income, in view of the provisions of the *Health Insurance Act*.

The SSAT concluded that the DSS was incorrect. Section 5B(2) provides, that where the DSS is satisfied that the ascertained income of the applicant for the prescribed period is less than the allowable income for that applicant, the DSS is to declare the person to be a disadvantaged person. 'Ascertained income' is defined to be income of a person in a prescribed period as ascertained pursuant to the Regulations. The Regulations do not define ascertained income. Income is defined in s.5B(12) as being ordinary income of the person for the purposes of the *Social Security Act 1991* (the Act). 'Ordinary income' is defined in the Act as being income in relation to the person. That is, all the definitions refer to the income of the person rather than combined income. Therefore only DM's income was relevant and this was below the allowable limit.

[Editor's note: The DSS has requested review of this decision by the AAT.]

Debt: reasonable excuse for not complying

EN and SECRETARY TO DSS

Decided: 11 January 1996.

EN appealed against the raising and recovery of a home child care allowance (HCCA) debt. EN failed to comply with a letter sent to her in September 1994 requiring her to notify the DSS within 14 days if she separated from her partner. EN separated in December 1994 but did not notify the DSS until September 1995. The SSAT found that EN was illiterate in her own language as well as English, and at the time in question she had no understanding of the social security system.

The SSAT considered s.1224 of the Act, the section used by the DSS to raise the debt. The DSS submitted that an amount had been paid because EN had failed to comply with a provision of the Act. EN had failed to comply with a notice under s.943(1) of the Act because she had failed to advise the DSS within 14 days of her separation. However, although s.943(7) requires a HCCA recipient to comply with any notice issued under s.943(1), it qualifies this requirement by providing that a person may have a reasonable excuse for failing to comply with the notice.

The SSAT concluded that because of her illiteracy, lack of understanding of the social security system, and the fact that EN only signed documents when her husband required her to without understanding them, EN was not capable of complying with the notices. Therefore, there was no debt because En had not failed to comply with a provision of the Act because she had a reasonable excuse for not complying with the notice.

Two AAT cases, *Van Brummelen* (1995) 86 *SSR* 1255 and *Somsak* (1996) 2(1) *SSR* 8, had decided that this provision (s.943(7)) only provided a defence when a person faced criminal charges. The SSAT disagreed with this interpretation.

The SSAT decided that there was a debt pursuant to s.1223(1), but decided that the balance of the debt as at 1 January 1996 should be waived. This was more appropriate than writing off the debt.

Cancellation of job search allowance on short notice

FO and SECRETARY TO DSS

Decided: 4 January 1996.

FO appealed against cancellation of his JSA. JSA was cancelled because FO had failed to lodge an application for continuation of payment in person at the DSS office on 15 August 1995 or the next working day.

The SSAT found that a recipient statement notice had been posted to FO on 9 August 1995. This form said the FO must personally take the form to the DSS office by 'early on 15/8/95 or the next working day'. FO attended the DSS office on 16 August 1995 at 2.30 p.m., but it was closed. He posted the form to the DSS on 17 August 1995.

Section 575(3) of the Act provides that the period within which a person is to give a statement to the DSS must begin at least 7 days after the day on which the notice is given. A notice is considered to be given on the day on which it would arrive in the ordinary course of the post. Therefore this notice would have arrived on the 10 August at the earliest. FO was required to lodge a document 5 days later and was not given the necessary 7 days notice. The notice did not comply with the formal requirements of s.575, and so was invalid. This meant the automatic termination provision did not apply, and JSA should not have been cancelled.

Newstart allowance: unreasonable delay

HQ and SECRETARY TO DSS

Decided: 21 March 1996.

HQ was receiving newstart allowance when he was breached by the CES, and then his allowance was cancelled. The CES submitted that HQ had unreasonably delayed entering a case management activity agreement (CMAA).

HQ, an Aborigine with limited literacy skills, lived on a small property about 40 km from a small town. He had no telephone, and collected his mail once a fortnight from the Post Office. HQ was sent 5 letters by the CES, 3 of which he received. HQ went to the CES after receiving one of the letters, but was told to

go to the DSS. This information was incorrect.

The SSAT set aside the DSS decision and found that HQ had not unreasonably delayed entering a CMAA. It commented that Employment Assistance Australia had not sufficiently considered how best to contact HQ. The SSAT suggested that in future the Aboriginal Liaison Officer or other field staff be used to contact someone in this situation.

HCCA: date of payment

GP and SECRETARY TO DSS

Decided: 25 January 1996.

GP had a child on 15 January 1995, and lodged a claim for family payment on 14 February 1995. She claimed parenting allowance (formerly HCCA) on 28 July 1995 which was paid from 3 July 1995.

GP had been incorrectly advised by the DSS when she claimed FP that she was not eligible for HCCA. She appealed to the SSAT because she believed that she should have been paid HCCA from the date of birth of her child. Section 910 of the Act provides that if a claim is lodged within 13 weeks of the birth of the child, then the HCCA is to be paid from the date of birth. Section 912(2) allows for an initial claim under the Act for another benefit, to be treated as a claim for HCCA if the person was qualified for HCCA at the date of the initial claim. It must also be reasonable to treat the initial claim as a claim for HCCA. The SSAT set aside the DSS decision to pay parenting allowance from 3 July 1995, and treated GP's claim for FP as a claim also for HCCA. This was made within 13 weeks, so HCCA could be paid from the date of birth.

Overpayment: limitation periods for recovery of debt

JR and SECRETARY TO DSS

Decided: 16 November 1995.

JR was overpaid $63,165 in widow's pension and age pension paid since 1978. The DSS became aware of the overpayment after carrying out a data matching exercise. This showed that JR was receiving a superannuation pension and a British retirement pension.

JR had failed to notify the DSS on her review forms from 1980 until 1992 that she was receiving this additional income. In her initial claim she had provided correct information about her income. The DSS had failed to take this into account.

The SSAT decided that waiver was not appropriate because the debt was not due solely to administrative error. To apply the limitation period pursuant to s.1231 of the Act (6 years), the SSAT must decided when a DSS officer became aware or could reasonably be expected to have become aware of the false statement or representation, or the failure or omission to comply with a provision of the Act. The DSS first became aware of the false statement in November 1994. The SSAT decided that the DSS should have become aware of the false statement shortly after it received the review forms which did not set out JR's previously declared income. However, each time JR made another false statement in her review form (10 times), the amount subsequently paid was a debt. The limitation period had to be considered in relation to each of these debts. The SSAT set aside the DSS decision and sent the matter back to the Secretary with the direction that only debts incurred after 18 September 1991 could be recovered.

[C.H.]

Income: reduction in school fees in lieu of wages

AB and Secretary to DSS

Decided: 20 February 1996

AB claimed home child care allowance on approximately 20 July 1994; and the allowance was granted from 29 September 1994. AB stated on her claim form that she was receiving no money from wages or salary.

From early 1993, AB's husband had worked as a cleaner at their children's school, in return for a significant reduction in school fees. When he became unable to continue this in early 1994, AB took on the work. AB saw this as a barter situation, as she did not receive any money for the work. The school, however completed group certificates in respect of the 1993-94 and 1994-95 years. The 1993-94 group certificate was not sent to AB as the income recorded was well below the tax threshold. AB received the 1994-95 group certificate in August 1995. In October 1995, she advised the DSS of the situation. A debt of $1767.40 was raised. This was reduced on internal review to $1213.00. AB appealed to the SSAT, arguing that as she had never received the money, she had not received income and had not misrepresented her situation on her initial claim.

The SSAT held that the only reason AB did not receive the money she earned was because she directed that it be paid towards the school fees. She had the legal right to receive the money. It was paid as directed by her. The fact that it was not paid into her hand did not mean she did not earn it. Her statement (in the initial claim) that she was not receiving any money was false. This false statement resulted in the overpayment and therefore a debt arose under s.1224(1).

The SSAT also considered whether AB's circumstances were sufficiently special to justify waiving recovery action or writing off the debt. It concluded that they were not; the family's financial situation was tight but manageable, and AB's husband would complete his degree by the end of 1996, with hopes of employment shortly after that. The debt arose largely because of a misunderstanding by AB. This may have been contributed to by the school, but this was not sufficient to justify waiver. Given the family's financial situation, write-off was also not appropriate and the debt should be recovered.

The Tribunal affirmed the decision under review.

[M.D'A.]