

## Job search allowance: assets test, excess curtilage

SECRETARY TO DSS and ELSEY  
(No. 10740)

**Decided:** 11 October 1995 by G. Ettinger.

The DSS requested review by the AAT of an SSAT decision which had set aside a DSS decision. The DSS had refused to grant job search allowance (JSA) to Elser under the hardship provisions of the benefit asset test. The SSAT had remitted the matter back to the DSS directing the DSS to apply the hardship provisions of the benefit asset test.

### The facts

Elser claimed JSA for the period 23 February 1994 to 15 August 1994. His claim was rejected under the benefit asset test. Elser owns a 24.28 hectare property where his family resides. He bought the property in 1991 for \$470,000. The Australian Valuation Office (AVO) valued the property in 1994 at \$470,000 with the excess curtilage being valued at \$150,000. The property was re-valued in July 1995 at \$465,000, with the excess curtilage being valued at \$145,000. Elser told the AAT that the value of the agistment of the excess curtilage was \$800. The AVO valued the commercial lease value of the property at \$1040 per annum.

There was disagreement between Elser and the AVO on how the excess curtilage was valued. Elser pointed out that the land could not be subdivided under the local council planning policy. This meant that the excess curtilage could not be sold separately.

### The hardship provisions

After Elser's claim for JSA had been rejected, he was advised by the DSS to lodge a claim under the hardship provisions. This he did on 2 May 1994.

The AAT noted that s.526(1) of the *Social Security Act 1991* provides that JSA is not payable if a person's assets exceed the person's assets value limit. At the relevant time the asset limit for Mr Elser was \$160,500. Because of the value of the curtilage, Elser's assets exceeded that limit.

Pursuant to s.1118(1)(b) of the *Social Security Act 1991*, certain assets, including the principle home, can be disregarded. The principle home includes a curtilage of 2 hectares. Any land in ex-

cess will be considered an asset for the purposes of the asset test limit. In Elser's case the excess curtilage was valued at \$145,000, based on the AVO valuation. The AAT accepted that this was the correct value of this asset.

Section 11(12) of the *Social Security Act 1991* defines unrealisable assets. An asset is unrealisable if it cannot be sold or realised, and the person cannot use the asset as security for borrowing.

It was submitted by the DSS that because the *Social Security Act 1991* exempted the principle home from the asset test, it did not mean that the principle home was an unrealisable asset. The AAT rejected that argument, stating that the *Social Security Act 1991* was beneficial legislation, and an applicant would not be required to put the family home on the market to receive a benefit.

Elser gave evidence that he had attempted to borrow money from his bank on the property. Because he was not working, his application for a loan was refused. The AAT accepted that Elser could not sell the excess curtilage separately from the family home because of planning restrictions. The AAT concluded that the excess curtilage around Elser's family home was an unrealisable asset.

The application of ss.131(1) and 132(1) of the *Social Security Act 1991* meant that the value of the excess curtilage could be disregarded when applying the asset test for the purposes of eligibility for JSA. If that asset was not included in Elser's assets, his assets did not exceed the asset test limit. Included in Elser's assets were shares in a family company. The AAT noted that the company's bank balance was \$15,500 but with tax liabilities. The DSS had determined that the net assets of the company were \$3100, and the AAT accepted this valuation.

Finally, the AAT noted that for the financial hardship provisions to apply, the DSS must be satisfied that the person would suffer severe financial hardship (s.1131(1)(g)). Elser gave evidence that he was married with 2 children aged 15 and 4. He had struggled to operate a sandwich bar, but had finally sold it because it was unprofitable. The \$20,000 Elser received from the sale of the business was spent on company tax and living expenses. Elser sold his car and bought a cheaper one. The AAT was satisfied that Elser was suffering severe financial hardship at the time he made his claim. Therefore, the AAT was satisfied that the financial hardship provisions applied, and Elser was to be paid JSA between 2 May 1994, when he made his claim under the financial hardship provisions, and

mid-August 1994, when he resumed employment.

### Formal decision

The AAT affirmed the decision of the SSAT that Elser's claim for JSA pursuant to the financial hardship provisions be allowed.

[C.H.]

## Assurance of support debt and waiver

HAYKAL and SECRETARY, DSS  
(No. 10895)

**Decided:** 29 April 1996 by J.R. Dwyer.

Haykal sought review of a decision of the SSAT to raise and recover an assurance of support debt of \$5,209.31, representing the amount of special benefit paid to Haykal's mother-in-law from 3 September 1991 to 1 August 1993.

### Background

Haykal signed an assurance of support covering his mother-in-law, Mrs Nadime Haykal, on 4 March 1991 in which he agreed to support Mrs Haykal for a period of five years. Mrs Haykal was granted permission to remain in Australia as a resident on 2 August 1991. She subsequently claimed and was paid special benefits between 3 September 1991 and 5 July 1994. However, recovery of the amount paid was limited to those payments made from 3 September 1991 to 1 August 1993 because of amendments to the Migration Regulations. Regulation 5.3 of the Migration (1993) Regulations provides that an assurance of support given before 20 December 1991, which had been in force for less than two years as at 19 December 1991, ceases to have effect at the end of two years from the grant of the relevant entry permit, in this case 2 August 1991.

### The issue

The AAT was satisfied that under the Migration Regulations, Haykal had incurred a debt to the Commonwealth, while s.1227(1) of the *Social Security Act 1991* provided for recovery of that debt. The remaining issue was whether any part of the debt should be waived or written off.

### Waiver

Haykal argued that he should not have to repay the debt because nobody from the DSS had visited him to tell him of his