obligation to refund special benefit paid to his mother-in-law. The AAT considered that there was no obligation on the DSS to visit or advise him of the fact that special benefit was being paid to his mother-in-law, and there was therefore no basis for waiver on the grounds of administrative error. In any event, the AAT, following *Re Secretary, DSS and Kratochvil (No. 2)* (1995) 84 *SSR* 1230, held that waiver on the grounds of administrative error pursuant to s.1237A(1) could not apply to an assurance of support debt because in those cases it is not 'the debtor' who has received the payment as required by that section. The only possible basis for waiver was pursuant to s.1237AAD of the *Social Security Act 1991* which applies where there are special circumstances.

Special circumstances

The AAT suggested that special circumstances might exist if it was satisfied that Haykal had:

- not known that his mother-in-law was being paid special benefit; or
- been supporting his mother-in-law even while she was receiving special benefit.

However, on the evidence before it, the AAT was not satisfied that either of these circumstances existed in Haykal's case, and as a result found that there were no special circumstances which made it desirable to waive the debt.

Neither was the AAT of the view that Haykal would suffer financial hardship if obliged to repay the debt, and there was therefore no reason to write off the debt.

Formal decision

The AAT affirmed the decision under review.

[A.T.]

Health care card: disadvantaged person

KNAPE and SECRETARY TO DSS (No: 10933)

Decided: 15 May 1996 by J.R. Dwyer.

Knape requested review by the AAT of an SSAT decision which had affirmed the DSS decision to reject Knape's claim for a health care card. The basis of that rejection was that her combined taxable income exceeded the prescribed limits.

The facts

The facts were not in issue before the Tribunal. Knape lodged a claim for a health care card on 7 February 1995. In her claim she indicated that her husband's gross weekly income was $535.00, but that his net income after deductions for tax and superannuation, etc. was far less. In a 4-week period his 'take-home' pay was $1596.20. Knape has 2 dependent children, and the allowable income limit for her would appear to be $1640. Therefore, if her husband's take-home pay was taken into account Knape argued, she would be entitled to the health care card.

Gross income or net income

Knape argued that the DSS should take into account her net income when assessing her eligibility for a health care card, because this was the income she actually received and the money available to support her family.

The AAT noted that the law which appeared to be applicable in this case was s.5B(2) and (12) of the *Health Insurance Act 1973*. In s.5B(2) it was stated that the Secretary to the DSS had to be satisfied that the applicant's ascertained income for the prescribed period was less than the amount of the allowable income for the same period. If that provision was satisfied, then the person would be declared a 'disadvantaged person'. Section 5B(12) defined income as ordinary income under the *Social Security Act 1991*. The prescribed period was defined as 4 weeks.

'Income' is defined in s.8 of the *Social Security Act 1991* as an income amount which is earned, derived or received by the person for the person's own use or benefit. Section 1072A(3) of the *Social Security Act* provides that a person's ordinary income is the person's gross ordinary income without reduction. The AAT referred to earlier decisions of the Federal Court which had discussed the meaning of income, but concluded that s.1072A(3) meant that the ordinary income of a person was their gross income. Therefore, the income to be taken into account when deciding whether or not a person would be declared a disadvantaged person, was the person's gross income. In Knape's case this would be her husband's gross income.

The AAT's power to review the decision

The AAT had some reservations about whether it had the power to review a decision of the Secretary not to grant a health care card. It noted that the term health care card was not defined in either the *Health Insurance Act* or the *Social Security Act*. However, the second reading speech in relation to *the Health Insurance Act* indicated that it was a benefit intended to be provided to needy families. The AAT concluded that this was insufficient for it to decide whether or not it had the power to grant a health care card. There was no relevant legislative provision which allows for the grant of such a card.

The AAT then considered whether it had the power to decide whether or not a person was a 'disadvantaged person'. Section 5F of the *Health Insurance Act* allowed for review of decisions made under s.5B. Section 1240(1)(b) of the *SSA* allowed for review of a decision under s.5B of the *Health Insurance Act*. Further provisions of the *Social Security Act* enabled the SSAT and the AAT to review that decision. The AAT concluded that it had the power to decide whether or not Knape was a disadvantaged person pursuant to s.5B of the *Health Insurance Act*.

Formal decision

The AAT varied the decision of the SSAT and decided that Knape was not a disadvantaged person within the meaning of that term in s.5B of the *Health Insurance Act* 1973.

[C.H.]

[Editor's Note: Surprisingly, the AAT did not consider whether Knape's husband's income could be taken into account as part of Knape's income. The definition of income in s.5B(12) states that income is ordinary income of the person for the purposes of the *Social Security Act 1991*. 'Ordinary income' is defined in the *Social Security Act* as income received by the person for the person's own use or benefit. It could be argued that Knape does not receive her husband's income, he does.]