

**Formal decision**

The decision of the SSAT was varied to include after the word 'Agreement' the additional words 'until notice is given to Edmonston under s.44 of the *Employment Services Act 1994*'.

[A.T.]

## Newstart allowance: failure to comply with CMAA

SECRETARY TO DEETYA and SVITLIK

(No. 11402)

**Decided:** 18 November 1996 by S.A. Forgie.

**Background**

A delegate of the Secretary to the DEETYA made a decision to cancel payment of newstart allowance to Svitlik because it was considered that he was not taking reasonable steps to comply with the terms of his case management activity agreement (CMAA). This decision was affirmed by an Authorised Review Officer, but set aside by the SSAT, which substituted a decision that Svitlik was taking reasonable steps to comply with the terms of his CMAA and remained qualified for newstart allowance.

**The facts**

Under the terms of the CMAA Svitlik agreed to participate fully in a New Work Opportunity program with Self Help, on a daily basis for six months commencing from 2 August 1995. However, he only attended the program until 19 September 1995.

According to training documents produced by Self Help, the course was supposed to offer 7 core modules, including on the job training, and electives such as desk top publishing, computer, secretarial and nursery skills, furniture manufacturing/restoration and sales training. Svitlik's evidence was that he was never provided with a copy of this document and none of the modules specified therein were offered when he attended the course. There were only two computers on the premises, one operated by Self Help staff. Self Help operated a plant nursery and those attending the course

were asked to work there but Svitlik refused as he was supposed to be attending a training program. Although he attended Self Help's premises daily from 9 a.m. to 4 p.m., the course participants drank coffee all day and came and went as they pleased. There was no teacher, apart from a person who came once a week to teach motivational 'self esteem'. Another person attended just prior to Svitlik's cessation of the course to conduct training in marketing. Svitlik refused to take part in the exercise proposed as part of that course as it required him to sell Amway products on behalf of Self Help. He said that he had sold Electrolux products for a number of years and was at Self Help to be trained to go into the work force.

Self Help completed a 'Cessation Advice' form which stated that Svitlik continually refused to work, and that when required to work he would only sign on and off and then leave. The form stated that he had officiated at many weekly weddings and funerals as he was a pastor. Svitlik gave evidence that he had officiated at only two weddings and a funeral with the permission of Self Help.

Svitlik and another course participant complained to the Commonwealth Employment Service about the Self Help program. Officers from that service visited Self Help to discuss the matter with course participants but by 18 September 1995 nothing had been done and the course had not improved according to Svitlik, who then advised Self Help he would not be returning.

The case manager gave evidence that Self Help had been contacted about the complaints, and was given one week to provide training schedules and improve the program. Svitlik was told to continue with the course. Only two of the original ten participants, being those who complained, failed to complete the course.

**Who may make a decision in relation to cancellation of newstart allowance?**

The AAT noted s.626 of the *Social Security Act 1991* (the Act), as modified by s.45 of the *Employment Services Act 1994* (the Employment Act), which provides in effect that newstart allowance is not payable for an activity test deferment period if a person fails to take reasonable steps to comply with a CMAA, and s.660I of the Act which enables the Secretary to cancel newstart allowance if satisfied that it is being paid to a person to whom it is not payable. Those provisions come within Part 2.12 of the Act and decisions made under that Part are made by the Secretary to the DSS (the Secretary).

Power to delegate such decision making to an officer is to be found in s.1299 of the Act and under s.1298A, the Secretary and the Secretary to the DEETYA (the Employment Secretary) may agree on administrative arrangements enabling officers of the latter Department to perform duties and exercise functions under Part 2.12 of the Act. The AAT did not explore whether appropriate delegations were held by the primary decision maker, but it was of the view that the decision said to have been made by a delegate of the Employment Secretary was in fact made by a delegate of the Secretary. As it did not affect the AAT's jurisdiction to review the decision however, the Tribunal did not express a conclusive view on the issue.

**Did Svitlik take reasonable steps to comply?**

The AAT accepted Svitlik's evidence and found that there was in fact no course conducted at Self Help's premises but that participants either worked in the nursery, played computer games, talked or drank coffee. None of these activities formed part of Self Help's course. The only instruction consisted of weekly motivational self esteem. These findings were not affected by the fact that 8 other participants had completed the program as meeting daily without a structure and without some form of instruction could not mean that they were attending a course.

The AAT concluded Svitlik could not participate in Self Help's New Work Opportunity sales/clerical course because there was no course in which to participate. His refusal to attend Self Help's premises was not the reason for his failure to comply with the terms of his CMAA, the absence of the course was. This was not a matter that was within his control or reasonably foreseeable by him. Accordingly, pursuant to s.45(6) of the Employment Act, Svitlik was taking reasonable steps to comply with the CMAA and met the additional qualification criteria for newstart allowance imposed by s.45(5) of the Employment Act.

**Formal decision**

The AAT affirmed the decision of the SSAT.

[A.T.]