

- accept any offer of paid work other than work that is unsuitable to be undertaken by that person; or
- accept any offer of a placement under the New Work Opportunities Program administered by the DSS.

### Findings

The AAT found that Hall had accepted the offer of a placement and had accepted the company's offer of paid employment. However, the AAT said that s.39(2)(a) and (b) did not require performance of the work contract once there had been an offer and acceptance. The AAT noted that the relevant provisions of the Act were quasi-penal provisions and should therefore be given a narrow interpretation. The AAT decided that because Hall had accepted an offer of a placement, he had conformed with the strict requirements of the Act, even though he never commenced the placement.

Although the AAT commented that Hall had been 'far too choosy' and 'unreasonable', it decided that the DSS was wrong in deciding he ceased to qualify for NSA.

### Formal decision

The AAT affirmed the decision of the SSAT.

[H.B.]

## Newstart allowance: written notice of obligation

CARLYLE and SECRETARY TO THE DEETYA  
(No. 12306)

**Decided:** 17 October 1997 by W.J.F. Purcell.

### Background

On 21 May 1996 and 5 June 1996, a case manager wrote to Carlyle requesting him to attend an interview in order to complete a case management activity agreement (CMAA). Carlyle did not attend the appointments. On 2 July 1996 the DEETYA imposed a breach on Carlyle's newstart allowance because he had unreasonably delayed entering into a CMAA.

At the time Carlyle was living in a block of flats. He had shared a flat there for some years with his mother. He then moved into another flat which he shared

with a man. When Carlyle formed a relationship with a woman, now his de facto spouse, the man got upset. As a result there was distress and disharmony in the flats. It was at this time that Carlyle and his mother experienced trouble with receipt of mail. Carlyle claimed he did not receive either of the case manager's letters.

### Issue

Is non-receipt of letters sufficient reason for delaying entering into a CMAA?

### The legislation

The relevant legislation is contained in Division 3 of the *Employment Services Act 1994* (ES Act). In particular s.38 discusses CMAAs and subsection (5) states that if a person is required to enter into an agreement, they must be given written notice of the requirement and the place and times at which the agreement is to be negotiated. A note to this section indicates that ss.28A and 29 of the *Acts Interpretation Act 1901* are to apply.

Section 44 of the ES Act sets out what happens when there is a failure to negotiate an agreement. The Employment Secretary must be satisfied that the person is unreasonably delaying entering into the agreement.

Section 45(5) of the ES Act states that a person is not qualified for newstart allowance unless when the person is required under s.38 to enter into a CMAA, the person enters into that agreement.

### Responsibility for mail problems

Carlyle claimed that he did not receive the letters from the case manager because of problems with mail delivery. His mother gave supporting evidence to the AAT. Carlyle maintained that as his de facto wife was expecting their first child, he would not have deliberately jeopardised his eligibility for payments. He did not unreasonably delay entering into the agreement.

The DEETYA argued that the letters were sent by pre-paid post to the Carlyle's residential address and this was sufficient notice. The reasons for Carlyle's non-compliance was within his control and he did unreasonably delay.

The AAT accepted the evidence of Carlyle and his mother relating to problems with mail delivery and that he did not receive the letters.

However the AAT found that Carlyle had attended a seminar on the subject of case management and had an expectation that he would receive correspondence from a case manager in the near future. The Tribunal found that Carlyle 'did not take any, or sufficient action to secure his mail, nor did he advise the Department of

the difficulty he was experiencing with his mail ... he was reckless or indifferent to the requirement to enter into a Management Agreement': Reasons, para.17.

Consequently, the Tribunal was satisfied that Carlyle's failure to attend the interviews was indicative of unreasonable delay in entering into a CMAA.

### Formal decision

The Tribunal affirmed the decision under review

[M.A.N.]

## Disability support pension: permanently blind

LAWSON and SECRETARY TO THE DSS  
(No 11767)

**Decided:** 11 April 1997 by A.M. Blow.

### The facts

Lawson applied for DSP on 27 December 1995 on the basis that he was legally blind. His claim was rejected by the DSS, and this decision was affirmed by the SSAT. Because his eyesight deteriorated rapidly in early 1995, he gave up his job as an engineer. He could no longer read or drive. While he could distinguish between light and dark, he could make out little on a television screen. He had a special pair of glasses nine millimetres thick which made images bigger but did not improve his eyesight. However, he could read, with difficulty, using the glasses.

### The medical evidence

Various written medical reports indicated that Lawson had extremely poor vision in his right eye and even less visual ability in his left eye. Dr Sidhu, an ophthalmologist, wrote that he was 'legally blind in the left eye from an ischaemic optic neuropathy for which no treatment is possible'.

### The Act

Section 95(1) of the *Social Security Act 1991* provides that a person is qualified for DSP if permanently blind, over 16 and compliant with certain Australian residency requirements. The Act does not define the term 'permanently blind'.

### Previous cases

Previous cases such as *Leach and Director-General of Social Services* (1983) 13 SSR 135 establish that 'permanently