course was more likely to improve his chances of sustained employment.

Findings

The AAT found that, from a purely technical viewpoint, Parker failed to comply with the terms of the CMAA. However the reason for this non-compliance was not within his control as it was only after he had accepted the job that he learnt that the position was not longer available. The decision to withdraw the job offer was found not to be a matter within Parker's control as it was made by another. The AAT also concluded that the withdrawal of the job offer was not a matter which was reasonably foreseeable by Parker.

Decision

The SSAT decision was affirmed. Parker remained qualified for NSA.

[H.B.]

Application for review: reinstatement

COFFEY and SECRETARY TO THE DSS (No. 12368)

Decided: 3 November 1997 by J.A. Kiosoglous.

Coffey lodged an application for review of a DSS decision to raise and seek recovery of an overpayment of $3502.86 (including penalty interest). This decision was made in August 1992, and had been reviewed by the SSAT and affirmed in June 1994. Coffey also lodged an application for an extension of time to lodge his appeal.

Following the SSAT decision, Coffey had lodged an application for review by the AAT. This application was dismissed by the AAT as frivolous and without merit on 7 November 1994. The AAT described this further application for review as effectively being an application for reinstatement

The arguments

The DSS opposed the application on the basis that it would be prejudiced if an extension was granted, and there needed to be a finality to administrative decision making. It was also argued that Coffey's case lacked merit. The AAT observed that the overpayment had been raised because the DSS alleged Coffey had under declared his income from employment. The debt has now been fully recovered.

Coffey argued that certain business expenses should be taken into account when assessing his income. He based this argument on an AAT decision of *Secretary to the DSS and Danielson* (decided 18 December 1995). The AAT pointed out that the Federal Court had overturned this decision, and the AAT had subsequently made a new decision.

Jurisdiction

The AAT advised Coffey at the hearing that it could not reinstate an application for review which had been dismissed. If Coffey wished to dispute the earlier AAT decision he must appeal to the Federal Court. Coffey explained that he had delayed returning to the AAT for three years, because he had experienced stress in 1994 due to criminal proceedings associated with the overpayment. Also, he received psychiatric treatment from April 1996. The AAT adjourned to enable Coffey to obtain a medical report and legal advice. At the resumed hearing Coffey argued that he had new information and that he wanted his application for review reinstated.

The AAT found that it had no jurisdiction to deal with an application which had previously been dismissed as frivolous and without merit. It also dismissed the application for an extension of time.

Formal decision

The AAT decided that it did not have jurisdiction and dismissed the application. It also refused to grant an extension of time to lodge an application for review.

[C.H.]

Late application for review: resting on rights

CORNALLY and SECRETARY TO THE DSS (No. 12367)

Decided: 4 November 1997 by D. Chappell.

Cornally sought an extension of time to lodge an application for review of an SSAT decision that Cornally owed a debt to the Commonwealth of $12424.58. The SSAT had made its decision on 14 December 1995, and Cornally had been advised of the decision by letter dated 29 December 1995.

The facts

Cornally had received newstart allowance (NSA) between 14 April 1993 and 10 March 1994. The DSS decided that during that period Cornally was self-employed not unemployed, and the SSAT agreed with this conclusion. The SSAT also found that Cornally had made false statements to the DSS, and therefore the debt arose pursuant to s.1224 of the *Social Security Act 1991* (the Act), and should not be waived.

Cornally told the AAT that a series of family tragedies and the severe economic downturn in the late 1980s led to a crisis in the family business. By the end of 1992 Cornally was not earning sufficient from the business to support his family of a wife and 3 young children. He sought alternative employment unsuccessfully. He was advised by the CES that he might be eligible for a social security benefit. Even though he had previously had few dealings with government and had always been self sufficient, he went to the DSS. After he received the application form, he asked for assistance to complete it. He told the DSS that he was the director of a family business, but he had no money or income. He relied on the DSS's advice when completing his forms.

Cornally said that the SSAT had not believed him and had been cynical about his evidence. The members had not accepted his evidence about the advice given by the DSS. This experience had led him to believe that he would not receive a fair hearing before the AAT, and so he did not appeal.

Because Cornally believed that he could not fight the DSS, he contacted the recovery section to negotiate a way to pay back his debt. In April 1996 he wrote to the DSS offering to repay the debt out of moneys he would receive from a consulting contract he had just obtained. He expected to receive his first payment under the contract in June 1996, and he offered to pay 10% of his gross income to the DSS.

In August 1996 Cornally wrote to the Minister for Social Security complaining about the advice he had received from the DSS and the CES, and asking her to investigate. He also complained about the appeal process. He referred to his right to appeal to the AAT, and that he had decided it would be useless to appeal. He also referred to his offer to repay the debt which had been rejected by the DSS as too slow. Cornally was advised by the Minister's office that he should explore his right to further review or complain to

the Commonwealth Ombudsman. The letter referred to Cornally's negotiations with the DSS, noting that these negotiations had commenced before the SSAT appeal. Cornally had agreed to repay $1000 by the end on June 1996, but had only repaid in total $286.

Cornally had approached the Legal Aid Commission seeking assistance about a further appeal. He was told to apply to the AAT for review of the SSAT's decision. This he finally did. He acknowledged to the AAT that he had been naïve and had made errors of judgment by not coming to the AAT earlier. He had been prepared to come to an agreement with the DSS, but did not accept the SSAT's decision.

The DSS submitted that Cornally was not naïve, and he had been aware of his appeal rights at all times. Case law indicated that an extension of time should not be granted if a person had rested on their rights, there would be prejudice to the other party or to the wider general public, the substantive application had little merit, and whether in all the circumstances it would be fair to grant the extension.

The conclusion

The AAT considered the principles outlined above when making its decision.

Resting on rights

The evidence showed that Cornally had been aware of his right of appeal from the SSAT decision. He chose not to exercise this right, but rather to negotiate with the DSS about repayment of the debt. The only reason Cornally was exercising this right now was because the DSS had commenced proceedings to recover the debt.

Prejudice to the DSS

As almost 20 months had elapsed since the SSAT decision, the DSS had a reasonable expectation that the matter was finalised. The DSS had already incurred additional expense recovering the debt.

Prejudice to the public

The effectiveness of the review process would be jeopardised if the extension was granted for the reasons outlined by Cornally. The public should be able to rely on the appeal process being dealt with efficiently.

Merits

The evidence of Cornally supported the SSAT's finding that Cornally was not unemployed when he was receiving NSA. He admitted that he was working up to 8 hours a day, and argued that because he was earning little money he should be entitled to NSA.

Fairness

Cornally had not provided a satisfactory reason for lodging his appeal almost 20 months after the SSAT decision.

The AAT pointed out that the original decision to raise the debt had been reviewed on a number of occasions by the DSS, the SSAT and the Minister's office. Before an extension of time could be granted Cornally must satisfy the principles set out above. The AAT said that it was satisfied on the comprehensive reasons of the SSAT that Cornally's substantive case had little merit.

Formal decision

The AAT refused to grant an extension of time to lodge the application for review.

[C.H.]

Student Assistance Decisions

AUSTUDY: intellectually disabled student: eligibility

WAITE and SECRETARY TO THE DEETYA
(No. 12138)

Decided: 21 August 1997, by L.S. Rodopoulos.

Waite sought review of a decision of the SSAT which had affirmed the DEETYA's decision that she was not eligible for the pensioner education supplement in 1996.

The legislation

Section 7(1)(c) of the *Student and Youth Assistance Act 1973* provides that, to be paid AUSTUDY, a student must be taking a course that has been approved for the AUSTUDY scheme by the Minister. Regulation 26 defines a secondary student as a student doing a secondary course. Regulation 27 provides that a secondary student must study at a secondary school or special school, a TAFE institution or a higher education institution. According to regulation 98, a student receiving, amongst other payments, a disability support pension, is not eligible for AUSTUDY but is eligible for a pensioner education supplement (of $30 a week) provided the student satisfies the normal conditions set out in Chapters 1 and 2 of the AUSTUDY Regulations.

The issue

The issue was whether Waite was undertaking a secondary course of study within the meaning of regulations 26 and 27 during 1996 when she was attending Goulbourn Special Developmental School.

The facts

Waite suffers from a genetic disorder causing her severe physical and intellectual deficits. She receives disability support pension as well as services under the *Intellectual Disability Services Persons Act 1986* (Vic.).

In 1996, Waite attended Goulbourn Special Developmental School, a recognised secondary school under regulation 27. The school classified her as a full-care student not involved in study or undertaking any graded secondary (Year 10, 11 or 12) studies. In a 1996 mid-year report she was described as requiring all her basic 'self care' needs to be attended to by staff. The principal said that she is a very seriously and multiply disabled young girl who cannot read or write. She is essentially wheelchair-bound, is in need of total care, requires assistance with toileting (requires her nappy to be changed) and feeding. Her IQ level, in common with the other students attending the school, was below 50. The principal's evidence was that Waite's program at the school had no connection with secondary school studies. Her activities included physiotherapy and sensory stimulation and coactive or assisted participation in the cooking program. He did not recommend her for the pensioner education supplement, nor did he recommend other students for it, because he was concerned that the school might face action by the Department of Education or some other authority if they recommended it when it was not appropriate.

In 1997, Waite enrolled in the Echuca Special Developmental School where