

of the Agreement, using the exchange rate applicable at the time of the AAT's decision. The result of that calculation resulted in a nil rate being payable to Harman, although his income only marginally exceeded the relevant income limit. The AAT noted that it was up to Harman to keep watch on his income and the exchange rate and make a fresh application for pension should his situation alter.

#### Formal decision

The AAT affirmed the decision under review.

[A.T.]

## Newstart allowance: whether 'unemployed'

**JAMES and SECRETARY TO THE DSS**  
(No: 12570)

**Decided:** 30 January 1998 by A.F. Cunningham.

James and her father had been involved in owning and racing horses since 1972, and she had obtained a trainer's licence in the late 1970s. James had received newstart allowance (NSA) since 1993, and in 1994 she had leased and moved to a 9 hectare property set up to train race horses. James said she had some 20 horses being worked and trained on the property at various times, and most had been unsuccessful. Since the middle of 1996 she had only 2 or 3 horses on the property. She had never registered the business because she did not have the \$30 fee, and she had never derived any profit from it.

On 7 June 1996 James entered a Case Management Activity Agreement (CMAA) in which she agreed to 'continue with horse training business' and to 'develop concept of horse training business'. A DSS officer arranged to visit James at home on 27 June 1997. According to James he arrived early, just as she was about to go for a ride with an owner and a trainer. The evidence was that the officer did not inform James of her rights in respect of the visit. The interview was conducted outside within hearing of the others, and took less than 20 minutes. The interview form stated James was working 8 hours a day for 7 days a week.

James said she was anxious to conclude the interview quickly, so she read and signed the form quickly. NSA was then terminated as James was considered to be not unemployed, and she sought review of that decision.

The SSAT had affirmed the decision because it found James' business activity demanded a substantial amount of time which would prevent her from engaging in other remunerative work. James told the AAT her current involvement consisted of an hour each morning to feed, clean out and work the horses, and 15 minutes in the evening to feed and clean out. Her racing involvement averaged 3 days a month, mainly Sundays. It did not prevent her from taking on other paid work, and she had made recent efforts to seek employment.

#### Unemployed

The issue was whether James was unemployed within the meaning of s.593 of the *Social Security Act 1991*. The AAT also looked at s.595(1) which provides:

'If:

- (a) a person undertakes paid work during a period; and
- (b) the Secretary is of the opinion that, taking into account:
  - (i) the nature of the work; and
  - (ii) the duration of the work; and
  - (iii) any other matters relating to the work that the Secretary considers relevant;

the work should be disregarded;

the Secretary may treat the person as being unemployed throughout the period.'

The AAT found that James' present time commitment of 1.25 hours a day was minimal and could scarcely prevent her from undertaking remunerative employment. It was satisfied that she was unemployed within the meaning of s.593. It said it appeared inconsistent for the DSS to require James to enter a CMAA in which she agreed to continue her horse racing business, and then to terminate NSA 12 months later when she was acting in accordance with the agreement.

#### Formal decision

The AAT set aside the decision and remitted it for reconsideration with the direction that NSA be reinstated.

[K.deH.]

## Application for review: limitation on date of effect

**THE AZZOPARDIS and SECRETARY TO THE DSS**  
(No. 12422)

**Decided:** 21 November 1997 by A.M. Blow.

Mr and Mrs Azzopardi live in Malta. They lodged claims for disability support pension (DSP) and wife pension respectively in January 1995. In August 1995 Mr Azzopardi's claim was rejected on basis of his level of impairment. As a result Mrs Azzopardi's claim was also refused. In January 1996 an officer of the Maltese Department of Social Security contacted his Australian equivalent and asked about the status of the Azzopardis' claims. The Australian officer replied on 9 February that the claims were rejected. On 20 May 1996 a Maltese officer sent a further facsimile together with additional medical evidence. On the basis of this information, the DSS decided in June 1996 to grant DSP to Mr Azzopardi with effect from 8 February 1996, the first pension pay day after the receipt of the first communication from the Maltese officer in January 1996. Mr Azzopardi appealed the decision not to grant the pension from the date of claim. Mrs Azzopardi's claim was refused because she did not qualify for the wife pension before 30 June 1995.

#### The issues

The issues were whether Mr Azzopardi sought a review of the decision, and whether the date of effect of the grant of DSP should have been earlier.

#### The legislation

The relevant parts of s.1240(1) of the *Social Security Act 1991* (the Act) state that a person affected by a decision of an officer under the Act may apply to the Secretary to the DSS for a review of the decision. Section 1239(1) indicates that the Secretary may review a decision if satisfied that there is sufficient reason to review the decision.

Section 115(1) states that a determination to pay the DSP under s.114 takes effect on the day on which the determination is made, or on such later day or earlier day as is specified in the determination. Section 115(3) states that if a decision is made to reject a claim for DSP, notice of this decision is given to the person, the person requests a review