

was unable to apply for the Supplement before December 1996. The AAT noted that s.7(8) of the Act required that applications for Financial Supplement from an eligible student (which Nguyen was accepted as being) be made by 31 May or 30 September in the relevant year. The AAT concluded that the DEETYA had incorrectly advised Nguyen that an application had to be made by 30 September. Because Nguyen was receiving AUSTUDY prior to 31 March, the correct date was 31 May. In any event Nguyen did not apply until December 1996, and so was not eligible for the full amount of the Supplement that might otherwise have been available. The AAT found that the DEETYA's application of the calculation formulae contained in s.9 of the Act was substantially correct, with one minor variation in relation to calculation of the number of days for which Nguyen was eligible from March to December 1996. This resulted in a consequential minor increase in the maximum amount to which Nguyen could have been entitled, had he applied by the specified date.

Beyond his control

The AAT further noted that no evidence beyond his oral assertion was provided by Nguyen as to his poor English skills, and that he had in the past successfully applied for both AUSTUDY and job search allowance. Nguyen's evidence was that he regarded the DEETYA's notices as unimportant, and he took no note of them until December 1996. The Tribunal concluded that Nguyen's circumstances did not fall within the scope of regulation 14.

Formal decision

The AAT affirmed the decision under review.

[P.A.S.]

AUSTUDY: minimum time of course; illness, circumstances beyond control

**RODOLICO and SECRETARY TO
THE DEETYA
(No. 12521)**

Decided: 24 December 1997 by G. Woodard.

Rodolico sought review of the SSAT's decision to affirm the DEETYA decision that he was not entitled to be paid AUSTUDY in 1997.

Rodolico had been enrolled in a 4-year engineering course at two institutions since 1989. He failed subjects in 1989, and eventually passed first year in 1990. Rodolico was enrolled as a full-time student in all years except 1995. In 1991 he failed all subjects which he repeated and mainly passed in 1992. Rodolico passed some subjects in 1993 but no subjects in 1994. He told the AAT that he had passed 6 of his 7 subjects in 1996, and according to Rodolico he was averaging 73% in his subjects in 1997. Rodolico had studied for 5.7 years prior to commencing study in 1997.

Rodolico explained that he had failed to complete his course in the allotted time because he had suffered an illness which had caused him to fail a year. His doctor, who had first seen Rodolico in 1993 diagnosed him as suffering anxiety, restlessness, variable mood and low confidence and self-worth. These conditions had affected Rodolico's ability to concentrate and his relationship with his partner at that time. Rodolico continued to suffer from these conditions through 1994. His second relationship in 1994 also broke down. Rodolico's partner in 1994 had psychological problems, and Rodolico attempted to assist her to overcome these problems by driving her to medical appointments and supporting her emotionally.

The law

The relevant law is set out in the AUSTUDY Regulations. Regulation 41(1) provides that AUSTUDY is payable to a student for the minimum time for the course plus one year. In Rodolico's case this would be 5 years. Regulation 48(1) states that no account is to be taken of a failed year of study for the purposes of

calculating the minimum time of a course, if the failure was because of the student's illness which was not diagnosed before the course in question, or other circumstances beyond the student's control.

Circumstances beyond control

The AAT found that Rodolico's failure in 1994 was not due to circumstances beyond his control, but rather because he chose to support his partner rather than concentrate on his studies. The AAT found this behaviour admirable, but not circumstances beyond Rodolico's control.

Illness

The AAT noted that Rodolico's behaviour in 1994 might have been due to his mood disorder and anxiety. However the evidence showed that Rodolico had not found it necessary to see his doctor for treatment for lengthy periods in 1994. He did not see his doctor until the exam period when he realised that he had wasted 1994 and that his partner was probably unwell.

The AAT concluded that Rodolico had not failed his course in 1994 because of illness or because of circumstances beyond his control. Thus 1994 had to be taken into account when calculating the years Rodolico had studied. Because Rodolico had studied for more than 5 years he was not entitled to AUSTUDY payments in 1997.

Formal decision

The AAT affirmed the SSAT's decision.

[C.H.]

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