

cause the retirement plans of Feyer and her husband had been delayed by nine months. The Tribunal noted that while the economic loss may have been notional, Feyer suffered considerable inconvenience and distress as a result of the negligence of the DSS.

The AAT also considered the application of 'compensation for detriment caused by defective administration' (CDDA). The guidelines include the following:

'The Secretary may approve a compensation for detriment caused by defective administration (CDDA) payment subject to the limitations below after an application for compensation under Finance Direction 21/3 has been refused.'

In fact, paragraph 4.3200 of the Guide suggests that where a payment under Finance Direction 21/3 has been refused, alternative entitlements to compensation (CDDA or act of grace payments) should, as a matter of course, be considered by the delegate.

The AAT strongly recommended that the DSS consider favourably the making of a CDDA payment to Feyer.

Formal decision

The Tribunal affirmed the decision under review.

[A.B.]

Disability support pension: qualification not within 3 months of application

SECRETARY TO THE DSS and ANGIN-FERNANDEZ (No. 12704)

Decided: 12 March 1998 by D.W. Muller.

Background.

Ancin-Fernandez arrived in Australia in 1988 at the age of 33 years, had limited English and no qualifications. She undertook some house cleaning and child care work, and in February 1996 applied for disability support pension (DSP), claiming lumbar disc degeneration, headaches and pelvic adhesions. She was assessed as having a 10% impairment in respect of her back, but her other conditions were not rated and on 25 March 1998 her claim was rejected. On appeal to the SSAT, this decision was set aside.

Meanwhile, in May 1996 Ms Ancin-Fernandez underwent a laminectomy, which was not successful, and her back pain continued. She re-applied for the DSP on 8 January 1997 and was subsequently rated as having an impairment of 35%. Her health conditions at that time included back and neck pain since 1991, depression, a left wrist ganglion operated on in 1995, constant lumbar pain, right sciatica and pain in her left arm. Ancin-Fernandez was granted DSP with effect from 8 January 1997.

The law

It was not disputed that Ancin-Fernandez was qualified to receive DSP from January 1997 — the issue was whether she was qualified to receive payment with effect from the date of her first application in February 1996.

The relevant legislation is contained in s.100(3) of the *Social Security Act 1991*, which provides:

'If:

- (a) a person lodges a claim for a disability support pension; and
- (b) the person is not, on the day on which the claim is lodged, qualified for a disability support pension; and

the person becomes qualified for a disability support pension sometime during the period of three months that starts immediately after the day on which the claim is lodged;

the person's provisional commencement day is the first day on which the person is qualified for the pension . . .'

The provisional commencement day

The AAT accepted that Ancin-Fernandez' health had deteriorated during 1996 to the point where she qualified for the DSP by the time the SSAT heard her application in December of that year. However, to be qualified on her original application of 9 February 1996, the AAT held she would have to qualify within 3 months of that date — that is, on or before 9 May 1996. There being no evidence that she qualified between 9 February and 9 May 1996, the AAT set aside the decision of the SSAT.

Formal decision

The decision of the SSAT was set aside and, in lieu, the AAT determined that Ancin-Fernandez did not qualify for DSP on her application dated 9 February 1996.

[P.A.S.]

Student Assistance Decisions

AUSTUDY: actual means test

IARIA and SECRETARY TO THE DEETYA (No. 12679)

Decided: 5 March 1998 by S.M. Bullock.

Background

Caterina and Concetta Iaria applied for AUSTUDY for 1996. They were both studying at the University of Western

Sydney but at different campuses. The DEETYA assessed a benchmark, for both Caterina and Concetta, for the notional family of the same size as the Iaria family to be \$34,049. The DEETYA review officer assessed the Iarias' actual means to be \$83,256. As a result Caterina and Concetta were not eligible for AUSTUDY in 1996. The family's actual means was reassessed in August 1997 to be \$68,081.40.

The issues

Did the actual means test preclude Caterina and Concetta from being eligible to

receive AUSTUDY in 1996? In particular, should certain expenditure be classified as business or investment related?

The legislation

The relevant regulations under the *Student and Youth Assistance Act 1973* are 12K, 12L, 12M and 12N. These regulations provide for an 'actual means test'. Regulation 12K provides that if a student has a parent who is a 'designated parent' he or she will not be entitled to receive living allowance unless the Secretary is satisfied that the 'actual means of the designated parent are less than, or equal