Administrative error

The AAT said it was clear the Guide attempts to address the situation of widowed, separated and divorced parents forming *new* relationships. When they reconciled, Cowie's parents were resuming an *old* relationship so the last paragraph did not apply.

Formal decision

The AAT set aside the SSAT's decision and reinstated the decision to raise and recover the overpayment.

[K.deH.]

AUSTUDY: away from home rate; parents' home inadequate for study

RAZI and SECRETARY TO THE DEETYA
(No. 12725)

Decided: 18 March 1998 by T. E. Barnett.

Background

Razi migrated with his parents from Iran in 1994. In 1995-96 he undertook English classes and some further study. In 1997 he enrolled in a TAFE course, and was granted AUSTUDY at the standard rate from 7 March 1997. On 23 May 1997 Razi advised that he no longer lived at home, and sought payment at the away-from-home rate, which was refused.

Both Razi's father and mother had been unable to obtain work since arrival in Australia, although both had worked previously and his father had run his own building business. Two or three times each week the parents invited friends with their children to their home to 'play music, dance, talk and laugh together'. These social gatherings would last into the evenings and sometimes late at night. The AAT accepted that, although Razi had his own room to study in, his parents were not sympathetic towards his study needs, and that this caused frequent arguments between them.

The issue

The issue for determination was whether it was impractical for Mr Razi to live at his parent's home because of the study difficulties there.

The law

Regulation 77 of the *Austudy Regulations* provides as follows:

> '77(2) A tertiary student qualifies for the away-from-home living allowance if the student is not living with a parent and it would be impractical for the student to live at his or her parents' principal home because:
>
> (a) . . .
>
> (b) it is difficult to study there; or
>
> . . . '

'Difficult to study'

The AAT noted that since leaving home Mr Razi's education results had improved, as had his relationship with his parents. The AAT concluded that regulation 77(2)(b) did not require that special or exceptional circumstances exist, but rather that studying at home be difficult, and that it was therefore impractical for the student to live at home.

The AAT was satisfied that studying at home for Razi was difficult due to his relationship with his parents and their social activities. As to whether living at home would be 'impractical' the AAT applied the Macquarie Dictionary definition to conclude that the issue to be determined was 'whether living at home is not fitted to the applicant's studies because of difficulty in studying there': Reasons, para. 16. For the aforementioned reasons, and the employment and financial difficulties of his parents, the AAT found that this criterion had been met. The AAT considered whether it would be practical for Razi to live at home but study elsewhere, such as at public libraries, but concluded this would be impractical as:

> '(Razi) would still have to contend with parties at his home when he returned . . . and would also be required to remain in an environment with his parents which was not only disruptive to his studies but openly hostile'

(Reasons, para. 19)

The decision

The AAT set aside the decision of the SSAT and substituted the decision that Razi was qualified for the away-from-home rate of living allowance.

[P.A.S.]

AUSTUDY debt: administrative error

VARRICCHIO and SECRETARY TO THE DEETYA
(No. 12723)

Decided: 17 March 1998 by B.H. Burns.

Varricchio sought review of a DEETYA decision to raise and recover $2123.18 of AUSTUDY overpaid from 1 January to 9 August 1995.

The facts

He was 16 years old when he signed an application form that had been completed by his father (Mr Varricchio). Varricchio had a hearing disability and his mother (Mrs Varricchio) was receiving child disability allowance (CDA) from the DSS for him. In reply to a question on the form asking if either parent receives a DSS pension, benefit or allowance etc., Mr Varricchio had ticked the 'yes' box in the column marked 'Mother'. When asked for the 'exact name of pension/allowance' he had written 'disability'. Mr Varricchio told the AAT he had never known the correct name for CDA and they always referred to it as a disability payment.

The DEETYA read the answers to mean Mrs Varricchio was receiving a disability support pension (DSP), and it paid maximum rate AUSTUDY during the period on that basis, despite the form also showing Mr Varricchio's income to be $41,256 which would have precluded payment of DSP to Mrs Varricchio.

For Varricchio it was argued that the poorly worded question and the lack of clear instructions for filling out the form was the cause of an 'erroneous' answer. This and the DEETYA's failure to check with the DSS, the apparent conflict between Mr Varricchio's income and Mrs Varricchio's receipt of DSP, were administrative errors to which the overpayment was solely attributable so that it must be waived pursuant to s.289(1) of the *Student and Youth Assistance Act 1973* (the Act). The DEETYA had conceded the amounts were received in good faith.

Administrative error

The AAT found the word 'exact' in the question:

> 'was sufficient to put a person filling out the form on notice as to the degree of particularity required by it . . . His response to the nature of the question was incomplete and inadequate to say the least, and for this reason the Tribunal