This dealt with the debt until the end of 1993.

For payments that were made in 1994, the AAT decided that although Jones had made no estimate in the form lodged in October, she had made a false statement, namely that combined taxable income would be below the limit that would allow payment of maximum family payment. Further, when advised by the DSS that family payment in 1994 would be based on an estimate (i.e. the estimate given in July 1993) she did nothing to correct that error.

The overpayment in 1994, the AAT said, arose out of a combination of administrative error (by the DSS changing the tax year without a request) plus a false statement by Jones. This suggests that the AAT considered that the 1994 part of the overpayment constituted a debt under s.1224 of the Act.

The AAT went on to find that in any event the money was not received in good faith, so waiver was not appropriate for any of the debt.

Formal decision

The AAT set aside the decision of the SSAT and decided that there was a debt for the whole period and it should not be waived.

[M.C.]

Income: lump sum payment

SECRETARY TO THE DSS and McLAUGHLIN (No. 12988)

Decided: 16 June 1998 by R.D. Fayle.

Mr and Mrs McLaughlin were milk vendors who were paid the sum of $121,950 by the Dairy Industry Authority of Western Australia (DIA) as part of the deregulation of the milk industry. The sum was paid in two almost equal instalments, one in July 1995 and the second in September 1995. In return, Mr and Mrs McLaughlin undertook to cease operating their milk vending business.

Mr McLaughlin was receiving disability support pension (DSP) and Mrs McLaughlin was receiving partner allowance at the time of the payment by the DIA. The DSS treated the payments as income, precluding both Mr and Mrs McLaughlin from any payments. The McLaughlins sought a review of that decision, and the SSAT held that the payments were not income (but the amount was an asset). That decision was appealed by the DSS to the AAT, which held, for different reasons, that the amount was not income. The Tribunal's decision was appealed to the Federal Court, which determined that the amount was income, hence Mr McLaughlin was precluded from receiving DSP. However, the Tribunal had not considered Mrs McLaughlin's situation, and the matter was remitted to the Tribunal to consider whether the moneys received by Mrs McLaughlin should be treated as income in the fortnight of receipt only.

It was apparently agreed by the parties that Mrs McLaughlin remained qualified for partner allowance, pursuant to s.771JA, despite the fact that Mr McLaughlin was not receiving DSP. The issue was whether the allowance was payable, and this was dependent on Mrs McLaughlin's income.

Income

The DSS argued that the amounts received by Mrs McLaughlin should be spread over a year, one fifty-second of the amount being taken as being received during each week of the relevant 12 months. The DSS relied on s.1074(1)(a) (as it then was; s.1073(b)(1) of the Act as amended is identical, except it has no heading). The full amount had been received in two instalments which did not relate to any particular period. The AAT accepted that the payments were not periodic payments in the sense required by the Act. They did not cover a specific period, but were to cover the entire period of 3 years. McLaughlin submitted that the relevant legislation was the *Benefit Rate Calculator B* at *Module G* (s.1068-G1). There is no dispute that this is the correct calculator for determining the rate of payment of partner allowance.

The Tribunal noted that there is a clear distinction between the wording of *Module E* (s.1064-E1, used for working out income for the pension rate calculator) and that of *Module G* (s.1068-G1, used for working out income for Benefit Calculator B). Section 1068-G1 states:

> 'Step 1 Work out the amount of the person's ordinary income *on a fortnightly basis.*' [emphasis in the Tribunal's decision]

It was accepted by the AAT that a specific statutory provision overrides a general provision, and that s.1074 is a general provision. The heading, which forms part of the Act, made that clear. The heading is no longer present, however the distinction between the general provisions of s.1073, as it now is, and the Benefit Rate Calculators, 'each of which address specific and limited circumstances' remains.

As a result, the amount of $121,950 is to be taken into account as income for Mrs McLaughlin in each of the two fortnights that the instalments were actually received. The Tribunal noted that:

> 'this is an odd result, having regard to the fact that the income in this case has the very same source for both Mr and Mrs McLaughlin but is treated quite differently for each in determining their respective claims under the *Social Security Act 1991*.'

Formal decision

The AAT set aside the decision under review and remitted the matter to the DSS with directions that Mrs McLaughlin's rate of payment of partner allowance be calculated on the basis that the sum of $121,950 is ordinary income to which s.1068-G7A applies, and is to be taken into account in each of the two fortnights that instalments were actually received.

[A.B.]

Assurance of support debt: DSS guidelines

EBRAHIMI and SECRETARY TO THE DSS (No. 12872)

Decided: 11 May 1998 by R.P. Handley.

Ebrahimi signed an Assurance of Support in respect of his parents who arrived in Australia from Pakistan on 4 April 1992. On 23 August Mr Ebrahimi (snr) was granted special benefit, with effect from 5 August 1993. On 1 September 1995 the DSS decided to raise and recover an Assurance of Support debt of $6804.20. This decision was affirmed by an authorised review officer and the SSAT.

Ebrahimi did not dispute the existence of the debt, but argued that the debt should not be recovered.

The legislation

The relevant sections of the *Social Security Act 1991* (the Act) as to 'waiver' are ss.1237A(1) and 1237AAD. The AAT accepted an earlier Tribunal decision (*Secretary to the DSS and Kratochvil* (1995) 37 ALD 515; 84 *SSR* 1230) that Assurance of Support debts cannot be waived under s.1237A(1) because receipt of the payments by the debtor is an essential criterion.