

Student Assistance Decisions

Student assistance: meaning of 'a year' in regulation 35

SECRETARY TO THE DEETYA and MOORE
(No. 12698)

Decided: 11 March 1998 by Mathews, J.

The DEETYA sought review of a decision of the SSAT which had set aside the decision to recover AUSTUDY payments made to Moore in the first semester 1996. The SSAT had determined that there was no debt.

The issue

The issue was whether Moore's completion of a summer course in January and February 1996 should be counted toward his studies in the first semester of that year. If so, he would qualify for AUSTUDY in that semester.

The legislation

Regulation 34 of the *AUSTUDY Regulations* provides that, to be eligible for AUSTUDY, a tertiary student must study full-time (34(1)), which requires that the student be enrolled in and undertake at least three-quarters of the normal amount of full-time work for a period (34(2)). In the case of 'HECS' designated courses, regulation 35(1) provides that the normal amount of full-time work for a year of the course is the standard student load determined by the institution for the purposes of HECS. The normal amount of full-time work for a semester of the course is 0.5 of the standard student load.

The facts

In 1994, Moore started a Bachelor of Business degree at the University of Technology Sydney (UTS). By undertaking a heavier than normal workload and completing 'summer school' in January and February of 1995 and 1996, he was able to complete his degree 6 months ahead of the normal completion time. In the first semester of 1996, he discontinued 2 subjects when he realised they were not required in order for him to complete his degree. He did not notify the DEETYA that he had discontinued these subjects because, taking his summer school

subjects into account, his workload was high enough for him to continue to qualify for AUSTUDY.

An enrolment check conducted in July 1996 indicated that, following the discontinuance of the 2 subjects in the first semester, Moore was left with a HECS loading of 0.208. The subjects undertaken at summer school had a HECS loading of 0.187, which, if added to his first semester HECS, gave him a total of 0.395 which exceeded the three-quarter requirement and therefore he qualified as a full-time student under regulation 34(2). A DEETYA delegate determined that he was not a full-time student following the discontinuance of the 2 subjects and raised an overpayment of \$2,821.22, being the AUSTUDY paid to him after the subjects were discontinued.

'A year'

The AAT noted that 'year' is not defined either in the *AUSTUDY Regulations* or in the *Student and Youth Assistance Act 1973*. Guidance is provided by regulation 7 which sets out the periods during which AUSTUDY is payable, and provides that, generally, 1 January and 1 July are the starting dates for AUSTUDY payments, depending on the commencement date of the particular course. The dictionary definitions of 'semester', as well as the Latin derivation of the word, suggest that it is measured as part of a calendar year. The common understanding of the word 'year' is that it means 365 days or 52 weeks. Summer courses which straddle two calendar years could be allocated a HECS loading according to the proportion of the course conducted in each calendar year. Moreover, it would be extremely unfair to deny eligibility to a student who reduces their AUSTUDY claim by one semester by undertaking a summer semester by excluding the summer portion of the student's studies from the calculation of the student's workload for no reason, except that it was undertaken during the usual university vacation. Each case must be determined on its own facts; in Moore's case, the summer school undertaken by him was treated as being part of his degree course by UTS and this, together with the other relevant circumstances of the case, combined to require an outcome favourable to Moore.

Formal decision

The AAT affirmed the decision under review.

AUSTUDY: actual means test; general living expenses

MAHER and SECRETARY TO THE DEETYA
(No. 12910)

Decided: 20 May 1998 by R.S. Rodopoulos.

The background

Maher claimed AUSTUDY in 1997 and was assessed under the actual means test. This was because Maher's parents were directors of the Maher Family Trust and, as such, were 'designated parents' under the legislation. The AUSTUDY claim was rejected as the actual means of the Maher family were more than the after tax income of a notional parent.

During the course of decision making the Maher family had given varying estimates of family expenditure. In May 1997 Maher's father had given an estimate of general living expenses of \$12,500. The SSAT had found the general living expenses figure to be \$7500. General living expenses covered expenses for two households: Maher's own, as she was renting close to university and Maher's parents' household.

The legislation

The AAT canvassed the relevant legislation, being the regulations under the *Student and Youth Assistance Act 1973*, specifically 12K, 12J, 12L, 12M and 12N. These regulations provide for an 'actual means test'. Under regulation 12K a student cannot be paid AUSTUDY unless the Secretary is satisfied that the actual means of the designated parent are less than the after tax income of the notional parent. Regulation 12N(1) defines what are the actual means of a designated parent. For the purposes of subregulation 12K, the actual means of a designated parent for the period of eligibility are taken to be the amount that equates to total expenditure and savings made in that period by the parent and each member of his or her family.

The issue

The issue in dispute was narrowed before the AAT to the correct figure to be assigned to general living expenses Maher

[S. L.]