# 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.

**[S. L.]**

## 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

disputed the figure of $7500 assessed as living expenses at the SSAT. Maher estimated living expenses for the two households as $4160. This lower figure would entitle her to AUSTUDY in 1997.

**General living expenses**

The evidence before the AAT was that Maher had first lived at home for 2 months in 1997, and then rented accommodation closer to university. She estimated her own grocery bills at $18-26 a week, and told the Tribunal that she was assisted with loans from her sister and boyfriend.

She commenced employment in July 1997, but did not advise the DEETYA of this, nor did she mention it to the SSAT. Not mentioned before the SSAT also was that Maher had accrued some savings by the time of her SSAT hearing (August 1997).

The AAT examined the figures concerning general living expenses as found by the SSAT ($7500) and as now estimated by Maher ($4160). The figure as found by the SSAT would mean general living expenses of $72 a week for each household, while Maher's estimate relied on accepting a figure of $40 a week of expenditure for each household. The AAT was not prepared to accept such a low figure in the absence of evidence of the parents' domestic expenditure, particularly where Maher's father had recorded a figure of $12,500 when estimating general living expenses in May 1997. It is clear from the AAT's decision that the AAT considered the SSAT generous in attributing only $7500 to general living expenses, however the AAT adopted that figure — it seems in the face of somewhat unsatisfactory evidence on the point.

The AAT then turned to the issues of Maher's employment, and her borrowings and savings. The Regulations required that earnings and savings be taken into account and this meant that the total figure to be calculated under 'Finance' in calculating actual means increased.

Borrowings are to be taken into account pursuant to regulation 12N(3), which provides that the Secretary may impute a value to a transaction engaged in for the benefit of a parent or member of the family, as if the parent or member of the family had expended the amount. The AAT, however, declined to impute a value to borrowings because the evidence about the borrowings was unsatisfactory.

Calculating the overall figures, the AAT found that the actual means of the Maher family were $35,712. The after tax income of a 'notional parent' as calculated under the Regulations was $33,405. This meant that the actual means of the Maher family exceeded the after tax income of the notional parent by $2307. AUSTUDY therefore was not payable to Maher in 1997.

**Formal decision**

The AAT affirmed the decision under review.

**[M.C.]**

# Federal Court Decisions

## *Debt: language barrier*

**ZAFIRATOS v SECRETARY TO THE DSS**
**(Federal Court of Australia)**

**Decided:** 9 September 1998 by Kiefel J.

The SSAT had found that Zafiratos had been overpaid various benefits amounting to a debt of $62,199.22. However, this debt did not arise because of the operation of s.1224(1) of the *Social Security Act 1991* (the Act). The AAT set aside the SSAT decision and found that the debt was as a result of s.1224(1). Zafiratos appealed to the Federal Court claiming that he had not been provided with a proper interpreter and that he had not been given a fair hearing.

**The facts**

Zafiratos claimed unemployment benefits in February 1987, sickness benefits in November 1989 and an invalid pension in October 1991. In each claim form he directed that his benefits be paid into an account in the name of his wife and his father-in-law. A similar direction was made in review forms. Zafiratos was paid at the married rate on the basis that his wife did not work. During the whole period, Zafiratos' wife was working. Zafiratos was also paid rent allowance. It was later shown that he lived in a house owned by his wife.

Zafiratos' wife pleaded guilty to fraud charges, whilst Zafiratos was acquitted of fraud in October 1995.

**The law**

Section 1224(1) provides:

'If:

(a) an amount has been paid to a recipient by way of social security payment; and

(b) the amount was paid because the recipient or another person:

(i) made a false statement or a false representation; or

(ii) failed or omitted to comply with a provision of this Act or the 1947 Act;

the amount so paid is a debt due by the recipient to the Commonwealth.'

**The AAT decision**

Zafiratos had argued before the AAT that even though he lived in his wife's house, they were separated under the one roof. All documents relating to the debts were completed by his wife, and not translated to him correctly. He agreed that he signed the forms. With respect to the record of interview with the Federal Police, Zafiratos argued that he had not fully understood the questions and his answers had been poorly interpreted. Finally Zafiratos stated that he could not access the bank accounts into which the benefits were paid.

The AAT did not accept that Zafiratos was a truthful witness. It noted that he deliberately prevaricated, and it did not accept that Zafiratos was unable to understand English. The AAT made a number of findings of fact, namely:

- in the statement to the Federal Police, there was no indication that Zafiratos and his wife were separated, and Zafiratos showed a knowledge and understanding of his wife's business;
- Zafiratos regularly drove his wife to work and was aware of her hours of employment;
- Zafiratos attended the DSS office on a number of occasions with his wife. The AAT did not accept that he could not understand the forms;
- Zafiratos understood his financial situation well enough to enter into a loan agreement in which he stated falsely that he was self-employed;
- Zafiratos gave evidence that he withdrew funds from the account in the name of his wife and father-in-law;