

### The AAT's findings in relation to Baldam's conduct

The AAT found that Baldam was prepared to enter into a CMAA at the relevant time. Her past behaviour was not sufficient evidence of a consistent disregard by her of the requirement to enter into a CMAA such that the AAT could be satisfied that she was not prepared to enter into an agreement on this occasion. She had entered into two previous agreements when asked to do so. The AAT accepted that Baldam took reasonable steps to collect her mail, that she did not receive the letters notifying her of the appointment, and that when she became aware of her failure to attend she immediately contacted her case manager. The DEETYA, at the time the breach was imposed, had not attempted to contact Baldam to seek an explanation, and therefore had no idea whether she had acted unreasonably or had a reasonable justification for her non attendance at the appointment.

### The Acts Interpretation Act and deemed receipt of notices

Although Baldam was deemed to have received the letters under the *Acts Interpretation Act 1901*, in reality she had no knowledge of the letters or the appointment. The AAT adopted the view taken by the Tribunal in *Geeves and Secretary to the DEET* (1996) 2(1) SSR 49 that unreasonable delay involves some mental element. As a result Baldam could not be said to have unreasonably delayed entering into a CMAA.

### Formal decision

The AAT affirmed the decision under review.

[A.T.]

## Newstart, compliance with CMAA, job offer

SECRETARY TO THE DEETYA and PARKER  
(No. 12450)

**Decided:** 28 November 1997 by E.A. Shanahan.

Parker's newstart allowance (NSA) was cancelled on 14 June 1996 and this was affirmed by an authorised review officer. On 12 December 1996, the SSAT set

aside this decision, directing that the matter be remitted to the DEETYA for reconsideration. The SSAT directed that Parker remained qualified for NSA at all times and had a reasonable excuse for not complying with his Case Management Activity Agreement (CMAA). The DEETYA appealed to the AAT.

### The facts

Parker had considerable experience in the mining industry. He received NSA from 12 April 1995 and entered a CMAA on 8 June 1995. His CMAA was amended on 17 May 1996, requiring Parker to check training courses available at Bendigo Skillshare and Eaglehawk Training Station. His case manager was Fordham and it was apparent that there was a lack of rapport between the two.

Clause 4 of his CMAA required that he accept an offer of a placement or a job under various training and skills programs. The agreement also provided that if Parker did not accept a suitable job or failed to comply with his CMAA his NSA 'may be stopped'.

On 17 May 1996 Parker attended Skillshare and the Eaglehawk Training Station to find out what courses were available. He then went to the Bendigo TAFE which offered a 'Certificate in Small Scale Mining Course' in 1996. Parker decided he wanted to do this course and was advised to attend an information night on 12 June 1996.

On 22 May Fordham nominated Parker for a Jobskills position as an RSL groundsperson with cleaning and maintenance duties. Parker attended as required on 30 May and was interviewed by the RSL the following day. Parker expressed interest in the training component of the job but did not think the practical duties were of much benefit as he already had the required skills. On 3 June Parker was offered the position but did not decide whether to accept it, as on the same day he had to undertake another component of his Jobskills Plan. On that day the Jobskills personnel decided that Parker should not be placed on the Jobskills program 'purely because of the negativity that we experience from Mr Parker'.

On 5 June Fordham advised Parker that a breach report would be issued if he rejected the position as an RSL groundsperson. Parker then rang to accept the position but was informed that they no longer wanted him for the job. Parker told Fordham he wished to pursue the mining course offered at the Bendigo TAFE and that he had applied for AUSTUDY.

On 13 June, Fordham advised Parker that he was in breach of his CMAA and his NSA was cancelled the following day. Parker subsequently completed the TAFE course whilst he received AUSTUDY. He also obtained a student loan of \$600 to pay for the course.

### The legislation

Section 45(5)(b) of the *Employment Services Act 1994* provides that a person is not qualified for NSA unless he or she satisfies the Employment Secretary that he or she is taking reasonable steps to comply with their CMAA. Section 45(6) provides that a person is taking reasonable steps to comply with a CMAA unless they have failed to comply with the terms of the agreement and

- (a) the main reason for failing to comply involved a matter within the person's control, or,
- (b) the circumstances that prevented the person from complying were reasonably foreseeable by the person.

### The issues

The AAT had to determine whether there was a breach of the CMAA, and, if there was a breach:

- was it something which was within the control of Parker; or,
- was it something that Parker could reasonably foresee?

### Federal Court decision

The AAT reserved its decision until the Federal Court decided *Secretary to the DEETYA v Ferguson* (1997) 2(10) SSR 144. This case also dealt with a breach of a CMAA. It was an appeal against an AAT decision that a failure to attend an interview because the person forgot could be a matter that was not within the person's control. The Court concluded that the question of whether a person is taking reasonable steps to comply with a CMAA depends on the person's attitude to the performance of the terms of that agreement, attendances at appointments on previous occasions, attempts to seek work, and other relevant information. As a result the matter was remitted to the AAT for further consideration on the basis of these findings.

### Discussion

The AAT was satisfied that by accepting the job offer on 5 June 1996, Parker had complied with the terms of the CMAA. It noted that the position offered to Parker was an unskilled job, performing essentially labouring duties. He had previously performed such duties and he felt they were unlikely to lead to long term employment. In contrast, the mining

course was more likely to improve his chances of sustained employment.

### Findings

The AAT found that, from a purely technical viewpoint, Parker failed to comply with the terms of the CMAA. However the reason for this non-compliance was not within his control as it was only after he had accepted the job that he learnt that the position was not longer available. The decision to withdraw the job offer was found not to be a matter within Parker's control as it was made by another. The AAT also concluded that the withdrawal of the job offer was not a matter which was reasonably foreseeable by Parker.

### Decision

The SSAT decision was affirmed. Parker remained qualified for NSA.

[H.B.]

## Application for review: reinstatement

**COFFEY and SECRETARY TO THE DSS**  
(No. 12368)

**Decided:** 3 November 1997 by J.A. Kiosoglous.

Coffey lodged an application for review of a DSS decision to raise and seek recovery of an overpayment of \$3502.86 (including penalty interest). This decision was made in August 1992, and had been reviewed by the SSAT and affirmed in June 1994. Coffey also lodged an application for an extension of time to lodge his appeal.

Following the SSAT decision, Coffey had lodged an application for review by the AAT. This application was dismissed by the AAT as frivolous and without merit on 7 November 1994. The AAT described this further application for review as effectively being an application for reinstatement.

### The arguments

The DSS opposed the application on the basis that it would be prejudiced if an extension was granted, and there needed to be a finality to administrative decision making. It was also argued that Coffey's case lacked merit. The AAT observed that the overpayment had been raised because the DSS alleged Coffey had under declared his income from employ-

ment. The debt has now been fully recovered.

Coffey argued that certain business expenses should be taken into account when assessing his income. He based this argument on an AAT decision of *Secretary to the DSS and Danielson* (decided 18 December 1995). The AAT pointed out that the Federal Court had overturned this decision, and the AAT had subsequently made a new decision.

### Jurisdiction

The AAT advised Coffey at the hearing that it could not reinstate an application for review which had been dismissed. If Coffey wished to dispute the earlier AAT decision he must appeal to the Federal Court. Coffey explained that he had delayed returning to the AAT for three years, because he had experienced stress in 1994 due to criminal proceedings associated with the overpayment. Also, he received psychiatric treatment from April 1996. The AAT adjourned to enable Coffey to obtain a medical report and legal advice. At the resumed hearing Coffey argued that he had new information and that he wanted his application for review reinstated.

The AAT found that it had no jurisdiction to deal with an application which had previously been dismissed as frivolous and without merit. It also dismissed the application for an extension of time.

### Formal decision

The AAT decided that it did not have jurisdiction and dismissed the application. It also refused to grant an extension of time to lodge an application for review.

[C.H.]

## Late application for review: resting on rights

**CORNALLY and SECRETARY TO THE DSS**  
(No. 12367)

**Decided:** 4 November 1997 by D. Chappell.

Cornally sought an extension of time to lodge an application for review of an SSAT decision that Cornally owed a debt to the Commonwealth of \$12424.58. The SSAT had made its decision on 14 December 1995, and Cornally had been ad-

vised of the decision by letter dated 29 December 1995.

### The facts

Cornally had received newstart allowance (NSA) between 14 April 1993 and 10 March 1994. The DSS decided that during that period Cornally was self-employed not unemployed, and the SSAT agreed with this conclusion. The SSAT also found that Cornally had made false statements to the DSS, and therefore the debt arose pursuant to s.1224 of the *Social Security Act 1991* (the Act), and should not be waived.

Cornally told the AAT that a series of family tragedies and the severe economic downturn in the late 1980s led to a crisis in the family business. By the end of 1992 Cornally was not earning sufficient from the business to support his family of a wife and 3 young children. He sought alternative employment unsuccessfully. He was advised by the CES that he might be eligible for a social security benefit. Even though he had previously had few dealings with government and had always been self sufficient, he went to the DSS. After he received the application form, he asked for assistance to complete it. He told the DSS that he was the director of a family business, but he had no money or income. He relied on the DSS's advice when completing his forms.

Cornally said that the SSAT had not believed him and had been cynical about his evidence. The members had not accepted his evidence about the advice given by the DSS. This experience had led him to believe that he would not receive a fair hearing before the AAT, and so he did not appeal.

Because Cornally believed that he could not fight the DSS, he contacted the recovery section to negotiate a way to pay back his debt. In April 1996 he wrote to the DSS offering to repay the debt out of moneys he would receive from a consulting contract he had just obtained. He expected to receive his first payment under the contract in June 1996, and he offered to pay 10% of his gross income to the DSS.

In August 1996 Cornally wrote to the Minister for Social Security complaining about the advice he had received from the DSS and the CES, and asking her to investigate. He also complained about the appeal process. He referred to his right to appeal to the AAT, and that he had decided it would be useless to appeal. He also referred to his offer to repay the debt which had been rejected by the DSS as too slow. Cornally was advised by the Minister's office that he should explore his right to further review or complain to