

the discretion, the reasons for the decision should always relate to the nature of the marital relationship. It also stated that financial hardship alone was not a sufficient reason to exercise the discretion. It would only be exercised if the marital situation was unusual, uncommon or abnormal. The guideline provided that the whole of the circumstances must be examined before deciding to regard someone as not a member of a couple.

The issue

The AAT had to decide whether the circumstances of the marital relationship were 'unusual, uncommon or abnormal' so as to warrant treating Kaddous and Mikhail as not a married couple for the purposes of the payment rate of DSP.

Submissions

The Department argued that there were no grounds to warrant the exercise of the discretion conferred by s.24(1). The AAT commented that financial hardship alone was not a sufficient reason to regard a person as not a member of a couple. The AAT referred to *Hawkins* (1997) 2(8) SSR 109 where Hawkins and his Filipino wife had no assets, income, earning capacity or financial resources to pool as their only income was his DSP. As the AAT found that Hawkins' wife was in a position of 'extreme impecuniosity' due to her inability to lawfully earn any income, the Tribunal was satisfied that there did exist grounds warranting that Hawkins be regarded as not a member of a couple. However, the AAT stated that in this case the financial difficulties experienced by the Kaddous family did not amount to 'extreme impecuniosity'.

The AAT stated that it had considered the disabilities of Kaddous. However, the AAT indicated that it had to take into consideration the legal obligations of Dr Ramzy who had signed the assurance of support. Due to the assurance of support, and due to Mikhail's possible entitlement to a pension income, the AAT said that Mikhail had access to financial resources that could be pooled. The AAT was not satisfied that Kaddous should be treated as if he were not a member of a couple.

Formal decision

The decision under review was affirmed. Kaddous would be paid DSP at the married rate.

[H.B.]

Reduction of newstart allowance: whether resignation was reasonable

BENDER and SECRETARY TO THE DFaCS
(No. 19990119)

Decided: 8 March 1999 by E.K. Christie.

Bender was a 54-year-old man who lived in Tennant Creek. From 1986, he had been mainly employed as a cleaner, maintenance worker and caterer. From 8 to 12 December 1997, he was employed as a cleaner at the Tennant Creek Hotel. He resigned this job as he was dissatisfied at the reduced hours available to him and the lack of an assurance as to the continued availability of work.

Bender told the AAT he had an oral agreement to commence work as a cleaner at the hotel 7 days a week for 35 hours a week. He said he arrived at the hotel to find that his allocated work had already been done. He had been unable to obtain a concrete reassurance that his work hours would be guaranteed. He told the AAT he resigned as this represented an 'intolerable situation'.

The issue

The AAT had to decide whether it was reasonable for Bender to have resigned his job as a cleaner due to the uncertainty of his hours and the continued availability of work. At issue was whether his newstart allowance should be reduced for breach of his activity agreement.

The legislation

Section 628 of the *Social Security Act 1991* provides that a person's newstart allowance may be reduced where they are unemployed due to their voluntary act, and the Secretary is not satisfied that this voluntary act was reasonable.

Submissions

The Department argued that it was not reasonable for Bender to resign his job. The Department contended that there were other avenues available to him. For example, he could have continued to work and looked for an alternative job or he could have negotiated further with his employer. Bender argued that, in a small, remote town, it was important to maintain his reputation as a good cleaner. He said that if the work was performed by

another, it might affect his reputation as a reliable and thorough worker.

The AAT conceded that Bender had to be careful to protect his reputation so as to ensure his future employment prospects, especially given his limited work skills in a remote area. The AAT was satisfied that his unemployment was not due to an unreasonable act.

Formal decision

The AAT set aside the decision. It was not unreasonable for Bender to have resigned his job in these circumstances. Bender would not be penalised for breach of the activity test. Bender's newstart allowance would not be reduced by 18%.

[H.B.]

Newstart allowance: carries on a business; deductions

HAYNES and SECRETARY TO THE DFaCS
(No. 19990062)

Decided: 5 February 1999 by B.H. Burns.

Haynes appealed against 2 decisions of the SSAT affirming decisions of the delegate of the Secretary, to raise and recover a debt of newstart allowance of \$1247.75 for the period 4 July 1997 to 28 August 1997 and to raise and recover a debt of newstart allowance of \$589.90 for the period 29 August 1997 to 9 October 1997.

Haynes was a registered tax agent, who, while in receipt of newstart allowance, conducted his own accountancy business and also did work for H&R Block. Haynes notified his income from both these sources on the fortnightly form he completed for his newstart allowance. In providing this information, Haynes consistently provided figures representing his total net income, after deductions for business losses and outgoings.

Section 1072 of the *Social Security Act 1991* (the Act) states that a person's ordinary income for the purposes of the Act is the 'person's gross ordinary income from all sources . . . calculated without any reduction, other than a reduction under Division 1A'.