would mean that a greater distance is travelled in this time than for driving in the city and that this may have cost implications. However, the Tribunal concluded that the legislation did not allow financial issues associated with costs of travel to be considered for the purpose of s.601(2A)(j).

The Tribunal then considered the evidence given about the number of people commuting and concluded that even if the number of 20 was accepted then this could still not be 'substantial'.

On the basis of these conclusions, the Tribunal found that the paid work that may be available in the La Trobe Valley was 'unsuitable' as there was not a 'substantial' number of people living in the same area as Noble who regularly commuted to work. Consequently the Tribunal found that within the meaning of Act, Noble was actively seeking and willing to undertake paid work.

Formal decision

The AAT affirmed the decision of the SSAT, but for different reasons.

[R.P.]

[**Contributor's Note:** The contributor is troubled by this decision in that it is clear that s.601(2B)(b) has not been satisfied, but on this author's reading of this decision, it would appear that the Tribunal has not considered whether sub para (a) is satisfied or not. In other words, no finding has been made about what is the principal reason for the difficulty in commuting where the time of travel is usually less than 90 minutes.

On this author's reading of the legislation, it is necessary that both subsections (a) and (b) be answered in the negative to justify a conclusion that commuting would be unreasonably difficult for the purpose of s.601(2A). The decision appeared to be based on the conclusion that subparagraph (b) was not met, and that this was sufficient.]

Income maintenance period

RAAMS and SECRETARY TO THE DFaCS (No. 20000121)

Decided: 18 February 2000 by J.A. Kiosoglous.

Background

Raams was receiving parenting payment when her husband received a lump sum payment for unused leave entitlements on 29 October 1998.

On 18 February 1999 it was decided that an income maintenance period (IMP) should have been applied from 29 October 1998. A debt was raised for the period 5 November 1998 to 28 January 1999.

This decision was affirmed by an authorised review office and the SSAT.

The issue and legislation

The issue in this case was the method of the IMP calculation. Section 1068B-D10 of the *Social Security Act 1991* (the Act) provides:

> **1068B-D10.** If:
>
> (a) a person's employment has been terminated and
>
> (b) the person receives a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise);
>
> the person is taken to have received ordinary income for a period (the income maintenance period) equal to the leave period to which the payment relates.

The legal submissions

The submission of Raams was that the IMP should be calculated taking into account the fact that he was working part time (two days a week) prior to stopping work. To do otherwise was discriminatory against part-time workers.

The term 'ordinary income' should refer to the income he actually received prior to stopping work, not the deemed income calculated on the basis of a ten-day fortnight.

The Department argued that what was relevant was the money that was available to the person, not the hours worked before ceasing work. To do other wise would be unfair to full-time workers as part-time workers would have longer IMP but would be eligible for higher rates of parenting payment.

Findings

The Tribunal identified a number of difficulties with Raams' submission:

- it would be difficult to determine the hours worked, as for many employees, including Raams, these change over the years. It would be unreasonable to expect the Department to calculate the average fortnightly hours and income in each individual circumstance;
- the basis of the legislation was clear. It was intended that where a person receives an amount of money they are expected to live off that before claiming benefits;
- the term 'period' in the Act relates to the period of leave and not how the leave accrues; and
- if Raams' submission were accepted then although the deemed amount of income would be less, the length of period would be doubled and Raams' husband would have had to wait twice as long before receiving newstart allowance.

Formal decision

The AAT affirmed the decision of the SSAT.

[R.P.]

Family payment estimate of income: departmental error; 'special circumstances'

BRITTAIN and SECRETARY TO THE DFaCS (No. 20000161)

Decided: 3 March 2000 by J.A. Kiosoglous.

Background

Natalie Brittain and her partner receive family payment in respect of their two children. In her claim for that payment lodged on 16 September 1996 Brittain estimated the combined family income for 1996–97 at $56,916. She received a letter dated 11 June 1997 requesting an estimate of income for the 1997–98 tax year, and included her estimate of $25,462 (her husband having ceased work in February 1997) when she returned the form attached to that letter. This latter estimate was used by the Department to calculate her family payments with effect from 3 July 1997, and Brittain was advised of this by letter dated 15 December 1997. On 22 October 1998 Brittain advised the Department that the actual family income for 1997–98 was $28,237. The Department in November 1998 raised a debt totalling $1867 being family payment for the period 3 July 1997 to 22 October 1998. This decision was affirmed by an authorised review officer in December 1998 and by the SSAT in January 1999.

Legislation

Section 1069-H13 ff of the *Social Security Act 1991* (the Act) sets out the