When considering the annual rate regard must be had to the character of the income. For example, a pensioner who was receiving a weekly wage would have their annual rate of income calculated on the assumption that they would continue to receive a weekly wage for the year. If the person left work, their annual rate of income would fall to nil.

> It is important to bear in mind that the focus of the reasoning of the High Court in Harris related to intermittent payments and the ways in which such payments could be annualised on either an averaged or varying basis. The judgement makes clear by reference to the example of a one off dividend payment that there are some payments which can, as a matter of fact, be treated as isolated without the need to go through the fiction of annualising income.

(Reasons, para. 11)

In certain circumstances an isolated payment may be the annual rate of income.

The Court noted that the replacement of the *Social Security Act 1947* with the *Social Security Act 1991* was not intended to substantially change the law. Therefore when 'the annual rate of income' became 'ordinary income on a yearly basis', there was no intention of changing the meaning.

The Department argued before the AAT that Rolley's annual rate of income should be calculated by taking the total income earned during the period and dividing it by the number of weeks during which the money was earnt. This figure is the average weekly income. That figure should then be multiplied by 52 to give the annual rate of income. The AAT relied on *Harris* and stated that there was no single method of ascertaining a person's annual rate of income. Whatever method was adopted must be fair. The AAT had concluded that the fairest method of ascertaining Rolley's ordinary income on a yearly basis, was the amount she had actually earned from her short-term employment.

The Court considered the first matter to be addressed was the character of the payments which have been received. A decision could then be made as to whether the income was recurring income from which an annual rate may be extrapolated.

> On the other hand a one off payment for work unlikely to be repeated could be dealt with on the basis that it reflected the total income from employment likely to be derived in any period of twelve months.

(Reasons, para. 20)

In *Harris* the Court made it clear that some payments could be treated as one-off payments. 'The circumstances of the particular case would show which method is more appropriate' (Reasons, para. 15).

Formal decision

The Court dismissed the appeal. There was no order as to costs.

[C.H.]

SSAT Decisions

Important note: *Decisions of the Social Security Appeals Tribunal, unlike decisions of the Administrative Appeals Tribunal and other courts, are subject to stringent confidentiality requirements. The decisions and the reasons for decisions are not public documents. In the following summaries, names and other identifying details have been altered. Further details of these decisions are not available fro either the Social Security Appeals Tribunal or the Social Security Reporter.*

Carer allowance: severely disabled child under six months of age

LH

Decided: 6 April 2000.

This was a rejection of a carer allowance in respect of T who suffers from cystic fibrosis. T's score on the Child Disability Assessment Tool was 0.1. LH lodged her claim when T was only three weeks old. On the evidence, the Tribunal concluded that T had a severe physical disability that existed prior to his birth and certainly from the date of claim.

The Tribunal first considered whether T was a disabled child noting the definition in s.952. The Tribunal was satisfied that T had a physical disability which he was likely to suffer from permanently. The Tribunal then considered whether cystic fibrosis was a recognised disability. It was not. However, the Schedule to the Child Disbaility Assessment Tool includes 'severe multiple or physical disability ... requiring constant care and attention where the young person is less than six months of age'. The Tribunal found that T required constant care and attention and that he had had a severe physical disability. He could be paid carer allowance until he turned six months of age.

Approved activity agreement

GR

Decided: 12 April 2000.

Centrelink made a decision to reduce GR's rate of newstart allowance by 18% for 26 weeks due to an activity test breach. GR was sent three letters, the first two inviting him to attend interviews and the third to re-negotiate a newstart activity agreement. He did not attend any of the three interviews. GR had signed a FLEX activity agreement on 12 November 1998. One of the conditions of that agreement was that he must attend when required by the Job Network provider. The Tribunal noted that the FLEX agreement did not say that GR could be breached if he did not attend the interview, but rather that his participation in intensive assistance may be cancelled.

The issue for the Tribunal in this matter was whether the FLEX activity agreement was a newstart activity agreement on a form approved by the Secretary and the Employment Secretary as required by the Act. The Tribunal made extensive enquiries with Centrelink and FACS. They received a copy of the approved form and found that it differed from the form signed by GR. The Tribunal was not satisfied that the agreement signed by GR was on a form approved by the Secretary. Therefore, there was no legislative basis for imposing a breach. The Tribunal also considered whether GR had unreasonably delayed entering into an agreement. There were problems with the letters sent to GR and the Tribunal concluded there were inaccurate references in the letters to previous appointments. GR had not unreasonably delayed.

[C.H.]