

Student Assistance Decisions

AUSTUDY: waiver; partners' payments linked; special circumstances

CARSTAIRS and SECRETARY TO THE DfaCS
(No. 20000906)

Decided: 11 October 2000 by
E.K. Christie.

Facts

Carstairs and her partner, Dienemann, had been social security recipients over many periods of their six-year relationship. Carstairs was in receipt of AUSTUDY when her partner recommenced work earning approximately \$1064 a fortnight on 8 February 1999. Centrelink subsequently sought to recover AUSTUDY overpaid between 8 February and 17 May 1999 totaling \$2143.84 on the grounds that Carstairs had not complied with her statutory obligation to notify changes in circumstances, and it was not advised of the earnings until 16 March 1999 when it received a letter of 11 March 1999 from Dienemann.

In evidence, Carstairs confirmed she did not advise Centrelink that Dienemann had returned to work. She had left this task to him. She was aware that AUSTUDY payments were calculated on the basis of her partner's income, but she was not aware of how the actual rate was calculated. She did not believe there was a need for her to personally notify because her benefits had been adjusted previously when Dienemann had advised Centrelink of changes in his employment circumstances. She had, however, telephoned Centrelink sometime in March 1999 to query why her benefits had decreased, and during that call she had informed Centrelink that her partner was working.

Dienemann said that he had verbally advised Centrelink of his pending return to work with some idea of earnings although Centrelink had no record of it. He had called the Melbourne office shortly after he started work. That advice was limited because his employer had not been able to provide accurate details. [It is not clear if this call was claimed to have been made from Carstairs' telephone, but Dienemann acknowledged in cross examination that

the first call he could have made to Centrelink from that telephone was 22 March 1999.]

A Centrelink review officer had noted that Carstairs' file contained several letters from Dienemann.

Reasons for decision

The issue was whether the debt should be waived. The relevant provisions of the Act were:

1237A(1) Subject to subsection (1A), the Secretary must waive the right to recover the proportion of a debt that is attributable solely to an administrative error made by the Commonwealth if the debtor received in good faith the payment or payments that gave rise to that proportion of the debt.

...

1237AAD The Secretary may waive the right to recover all or part of a debt if the Secretary is satisfied that:

- (a) the debt did not result wholly or partly from the debtor or another person knowingly:
 - (i) making a false statement or a false representation; or
 - (ii) failing or omitting to comply with a provision of this Act or the 1947 Act: and
- (b) there are special circumstances (other than financial hardship alone) that make it desirable to waive; and
- (c) it is more appropriate to waive than to write off the debt or part of the debt.'

The AAT followed *Junor & Secretary DSS* (1997) 48 ALD 326 in holding that Carstairs was personally required to notify of Dienemann's change in circumstances. As that was not the case she contributed to the administrative error that led to the overpayment, so the debt could not be waived under s.1237A.

After referring to *Beadle & DGSS* (1984) 20 SSR 210 as to the meaning of the expression 'special circumstances', the AAT concluded that the circumstances in which the overpayment occurred were sufficiently 'unusual' or 'uncommon' to justify the description. From Carstairs' past experience over a number of years of variations to her payments after Dienemann advised of a change in circumstances, it was reasonable for her to infer, and come to believe, that their files in Centrelink were linked, and that information notified by Dienemann about changes in his employment circumstances would be acted on by Centrelink and be reflected in

changes to her AUSTUDY entitlement. Applying *Callaghan & Secretary DSS* (1996) 2(9) SSR 125 the AAT found, on the civil standard of proof, that Carstairs did not knowingly fail to comply with a provision of the Act. Accordingly, it concluded that s.1237AAD(1) applied.

Formal decision

The AAT set aside Centrelink's decision and in substitution decided to waive the whole debt accrued from 8 February to 26 May 1999 under the 'special circumstances' provision of the Act.

[K.deH.]



HECS: debt remission; special circumstances

CALLAGHAN and SECRETARY TO THE DETYA
(No. 20000907)

Decided: 13 October 2000 by
S.A. Forgie.

Callaghan was a sportsman in the National Ironman Series in 1999. In the first semester of that year he had been a student at the Curtin University of Technology enrolled in three subjects. He withdrew from two subjects on 19 March 1999, but withdrew from the other subject after the census date of 31 March 1999. He incurred a Higher Education Contribution (HEC) debt in respect of that subject pursuant to s.196L of the *Higher Education Funding Act 1988* (the Act), and requested that it be remitted.

Legislation and guidelines

Section 106L of the Act enables the whole or part of a HEC debt to be remitted if the Secretary is satisfied that special circumstances apply to the person. Subsection 106(3) provides:

For the purposes of this section, special circumstances, in relation to a person, include a circumstances that the Secretary is satisfied:

- (a) are beyond the person's control; and
- (b) do not make their full impact on the person until on or after the census date for the course of study for the semester ... ; and