

(The DFACS had also argued that s.1237A(1) could not apply because there was no administrative error.)

The AAT noted that in *Re Beadle & DGSS 1(20) SSR 210* it was stated that the phrase 'special circumstances' was 'incapable of precise definition' and that 'circumstances must have a particular quality of unusualness that permits them to be described as special'.

The AAT was satisfied that the 'watchhouse rules' applied while Neivandt was at the Maroochydore Watchhouse. He had done the only thing possible and asked the police to notify Centrelink but that was not acted upon. The AAT held the 'watchhouse rules' to be unusual and so warranted the description of 'special circumstances'. Also, it agreed with the SSAT (without reiterating its reasoning) that Neivandt did not knowingly or deliberately contravene the Act. On this basis it waived, pursuant to s.1237AAD, the debt accrued during that period.

The Arthur Gorrie Correctional Centre and the Woodford Prison Farm, however, provided Neivandt with an opportunity to notify Centrelink. The circumstances that applied for the debt that accrued after 23 November 1999 could not be described as special, and that debt could not be waived under s.1237AAD.

Formal decision

The AAT set aside the decision under review and decided to waive the DSP overpaid from 18 to 22 November 1999.

[K.deH.]

Overpayment: data matching and special circumstances

SECRETARY TO THE DFACS and MARIA & CARLOS DUARTE
(No. 2000/927)

Decided: 25 October 2000 by J.D. Campbell.

Background

Mrs Duarte worked at a nursing home between 27 August 1996 and 7 August 1997. During this time Mrs Duarte received parenting allowance and Mr Duarte received disability support pension.

They were sent various notices requiring them to advise of income changes.

Following employment verification reports, debts were raised for the period 16 February 1996 to 14 August 1997. On review, part of Mr Duarte's debt was waived due to administrative error — the remaining debt was for the period 13 May 1996 to 7 August 1997. It was found that although there was administrative error, there was no good faith.

The SSAT set aside both decisions. It decided that the overpayment was raised, at least partly, on the basis of information obtained through a data-matching exercise under the *Data Matching Program (Assistance and Tax) Act 1990* (DMP Act). This required commencement of recovery within 12 months of obtaining the relevant data, and this did not occur.

The issue

The Tribunal identified three key issues:

- whether the employment declaration form match conducted by Centrelink is subject to the requirements of the DMP Act;
- if this Act does not apply, whether there were debts for the period 27 August 1996 to 7 August 1997, ie the period relating to employment with Camden Nursing Home;
- whether administrative error or special circumstances waiver should apply.

The evidence

Mr and Mrs Duarte's evidence was that Mrs Duarte started work at Camden Nursing Home in late August 1996. She spoke with a Centrelink officer on 16 September 1996 and advised about casual employment, providing a copy of her first pay slip. She said that her and her husband's payment remained the same, but they did not think that anything was wrong.

The submissions

The Department argued that data matching was governed by the information principles in the *Privacy Act 1988* and not the DMP Act.

It was also argued that there was a breach of the *Social Security Act 1991*, by virtue of the failure to advise of employment within 14 days, that administrative error was not the sole cause of the debt and that the payments were not received in good faith. Further, because the failure to comply was done 'knowingly', then special circumstances waiver did not apply.

Data matching

The AAT concluded that the *Social Security Act 1991* requires disclosure of

certain information and that paragraph 16(4)(e) of the *Income Tax Assessment Act 1997* allows the Australian Taxation Office to pass information to the Department:

... for the purpose of administering any Commonwealth law relating to pensions, allowances or benefits. As such disclosures are authorised by law, the Tribunal finds that they are governed by section 14 of the Privacy Act, and more particularly by the information privacy principle 11 within section 14.

(Reasons, para. 36)

The Tribunal concluded that the 'data matching program as nominated is not governed by the DMP Act'.

Waiver

The AAT accepted that because the notification of employment did not occur within the required 14 days there was a debt under s.1224 of the *Social Security Act 1991*.

It concluded that both Mr and Mrs Duarte believed that their payments would decrease after notification on 16 September 1996, but they actively decided to take no further action.

Consequently, although the overpayments after 16 September 1996 arose solely from administrative error there was no good faith.

The Tribunal did not dismiss special circumstances waiver on the grounds that Mr and Mrs Duarte 'knowingly' breached the Act. It considered the administrative error of Centrelink, Mr Duarte's back condition and their financial situation, but found that these circumstances were not 'special'.

Formal decision

The AAT set aside the decision under review, and substituted a decision that:

- Mrs Duarte received an overpayment of parenting allowance during the period 28 August 1996 to 7 August 1997 and that a debt of \$6041.80 was owed to the Commonwealth; and
- Mr Duarte received an overpayment of income support payments during the period 28 August 1996 to 7 August 1997 and there was a debt of \$4547.30.

[R.P.]