may study at more than one institution and continue to be a full-time tertiary student for Austudy. However, certain requirements had to be met and it specifically excluded the adding together of subjects that did not form part of an approved course.

Findings

The Tribunal found that the applicant could not meet the requirements of s.569C because neither course was considered by Bega TAFE to be full-time study. The Tribunal also found that she could not satisfy the normal amount of full-time study within the meaning of ss.569E(1) and (2) as she was not in either course undertaking 20 hours of study nor three-quarters of the full-time load, that is 15 hours. The Tribunal noted the Department's submission that the legislation appears to reflect that people who study part-time may be eligible for income support, not from Austudy but from newstart allowance.

In relation to the combining of the two courses, the Tribunal noted that neither the legislation nor the Guide explicitly dealt with that circumstance but noted the reference in the Guide to study in two institutions. The Tribunal concluded that the applicant was not undertaking qualifying study as a full-time student on the basis that there was no evidence of any formal recognition by the institution that the unrelated subjects could be added together or that it would constitute full-time study.

Formal decision

The decision under review was affirmed.

[G.B.]

Youth allowance: full-time study; meaning of 'the particular study period'

COLEMAN and SECRETARY TO THE DFaCS (No. 2002/772)

Decided: 5 September 2002 by J.A. Kiosoglous.

Background

Coleman began a Bachelor of Health Science in 1999 and was paid youth allowance on the basis that he was in full-time study. In the first semester of 2000 he undertook study with a workload of 8 points and in the second semester, he undertook study with a value of 14 points. The total points passed in 2000 amounted to 22 points. Coleman had no choice of subjects and had to undertake his study in this way. When Centrelink received his enrolment details for first semester 2000 it considered that his workload had become less than 75% of a normal full-time load and he was not a full-time student in first semester 2000. As a result a youth allowance debt of $1613.69 was raised and recovery sought.

Issues

The issues were whether Coleman was a full-time student in the period 28 February 2000 to 5 July 2000 and, if not, whether there were grounds to waive the right to recover all or part of the youth allowance debt.

Legislation

Section 541B(1) of the *Social Security Act 1991* provides, as follows:

> 541B.(1) For the purposes of this Act, a person is undertaking full-time study if:
>
> (a) the person:
>
> (i) is enrolled in a course of education at an educational institution; or
>
> (ii) ... or
>
> (iii) ... and
>
> (b) the person:
>
> (i) is undertaking in the particular study period (such as, for example, a semester) for which he or she is enrolled for the course; or
>
> (ii) either:
>
> (iii) in a case to which subsection (1A) does not apply — at least three-quarters of the normal amount of full-time study in respect of the course for that period (see subsection (2) to (4)); or
>
> ...

The meaning of 'normal amount of full-time study' is provided in s.541B(2) as follows:

> **541B.(2)** For the purposes of paragraph (1)(b), the normal amount of full-time study in respect of a course is:
>
> (a) if the course is a designated course of study within the meaning of Chapter 4 of the *Higher Education Funding Act 1988* — the standard student load determined in respect of the course by the institution in question under subsection 39(2) of that Act; or
>
> (b) if the course is not such a designated course and the institution defines an amount of full-time study that a full-time student should typically undertake in respect of the course — the amount so defined; or
>
> (c) otherwise — an amount of full-time study equivalent to the average amount of full-time study that a person would have to undertake for the duration of the course in order to complete the course in the minimum amount of time needed to complete it.

What is the relevant period of study?

Coleman submitted that the particular period of study to be considered in assessing full-time study should be a year. He was enrolled as a full-time student in 2000 as evidenced by his course work results. The normal annual full-time study load for students was 24 points and he undertook 22 points. This was clearly more than the 75% requirement under s.541B of the Act.

Coleman argued that there was no clear legislative interpretation or policy which necessitates ignoring the year and looking only at a semester in determining the 'particular study period' for the purposes of s.541B. The phrase 'such as, for example, a semester' within s.541B(1)(b)(i) was an example, not a direction.

Coleman referred to the Federal Court decision in *Secretary, Department of Employment, Education, Training & Youth Affairs v Gray* [1999] FCA 1150 and to the Tribunal decisions of *Secretary, Department of Family and Community Services & Machan* [2001] AATA 434 and *Miller & Secretary, Department of Employment, Education and Training* (AAT 10412, 16 June 1995).

Coleman indicated that the normal university courses ran in academic years. 'The "particular period of study" in s.541B(1)(b)(i) of the Act remains a year but that the example of a semester was given in the legislation to enable a student to qualify for a benefit if, for example, he or she only had one semester to go in a particular course' (Reasons, para. 14). Coleman argued there is no conclusive definition of the 'particular period of study' requirement but that there are as many references to 'full year' in the legislation and other instruments as there are to 'semesters'.

The Department submitted it was necessary for Coleman to study for at least 9 points per semester to be classified as a full-time student (9 points per semester would be equal to 75% of a normal study load of 12 points per semester). As he was only studying for 8 points in semester one he could not be classified as a full-time student.

The Department commented that youth allowance was introduced as a

flexible income support payment for young people which was not focused solely on study and that if a person is not studying fulltime, then he or she must do other things in conjunction with that part-time study, for example, volunteer work.

The Department submitted that there is no definition of 'period of study' in the legislation as it was not possible to have one definition covering all situations. The Department breaks down the study period into the smallest unit possible for reasons of both consistency and flexibility, including distance learning or self-paced study. To insist on the academic year as the only relevant 'period of study' is an inflexible approach. It was submitted that if a person is one subject short for a semester, they can do a range of activities in addition to study to still qualify for youth allowance, for example, volunteer or part-time work.

The Department also referred to the decision of *Gray* and argued that the wording of s.541B(1)(b)(i) of the Act was not superfluous. The example of a semester:

> was intended to direct the decision maker to a particular interpretation but allowing them to look at other study periods if the case so requires, for example, in the case of trimesters or individual topics of study. It was submitted that this is the only section in which an example is embedded in the text and this fact gives the example significance.

(Reasons, para. 25).

The Department submitted that, overall, the extrinsic material demonstrates that the Minister has consistently referred to the term 'semester' in relation to the study period. This shows a clear intention that the usual study period is a semester. The Tribunal was referred to the explanatory memorandum to the *Social Security Legislation Amendment (Youth Allowance) Bill 1997*; the explanatory memorandum to the *Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Bill 1998;* explanatory memorandum to the *Youth Allowance Consolidation Bill 1999;* and the *Youth Allowance (Satisfactory Study Progress Guidelines) Determination 1998.*

The Department tried to distinguish the cases referred to by Coleman on the basis that they dealt with the Austudy regulations under the *Student and Youth Assistance Act 1973.*

The Tribunal considered the Department's semester focus is not exclusionary but a consistent approach to students in similar circumstances. The Tribunal was satisfied that the legislation supported by the extrinsic evidence means that a student has to do a certain amount of points per semester. On the facts presented to the Tribunal, it found that Coleman fell short of the 75% variation in first semester.

The Tribunal commented that it is not made clear to students how the legislation was interpreted to enable them to know how to spread out their subjects during the year. The Tribunal found:

> the youth allowance is not a study allowance but rather an activity allowance which allows, inter alia, the right to study. The proper meaning should be made quite clear to students to assist them in planning their study program not only for a full academic year but also for the amount of subjects it is necessary for them to undertake each semester in order to reach the 75% minimum required in section 541B(1)(b)(i) of the Act.

(Reasons, para. 40)

The Tribunal found that Coleman, through no fault of his own, was not enrolled for at least 75% of the normal amount of full-time study during semester one. There were no grounds to waive the debt.

Formal decision

The Tribunal affirmed the decision under review.

[M.A.N.]

Youth allowance debt: who is the recipient?

SECRETARY TO THE DFaCS and RINGIN (No. 2002/0281)

Decided: 19 April 2002 by J. Handley.

The respondent, Daniel Ringin, was granted youth allowance (YAL) from his 16th birthday on 1 November 1999. On that day he was sent a notice obliging him to notify if he or his parents married, or reconciled with a separated partner, or started living with someone as their partner. Payments were made to his mother, Mrs Ringin, who was then receiving newstart allowance (NSA) for which she had received similar notice.

On 13 November 1999, Mrs Ringin began living with Mr Lane. She notified Centrelink of this on 15 November 1999 and her NSA ceased. YAL payments for Daniel continued, and another notice was sent to him on 26 November 1999.

YAL ceased after Mrs Ringin contacted Centrelink in June 2000. Daniel was then asked to repay YAL totaling $2288.39 paid between 13 November 1999 and 16 June 2000.

On review the SSAT held that Daniel was not the recipient of the YAL and did not have a legally recoverable debt. The Secretary then sought a further review by the AAT.

Recipient

Subsection 1223(1) of the *Social Security Act 1991* (the Act) provides:

> Subject to subsection (1A) and (1B), if an amount has been paid to a person by way of social security payment on or after 1 October 1997 and;
>
> (a) the recipient was not qualified for the social security payment when it was granted; or
>
> (b) the amount was not payable to the recipient;
>
> the amount so paid is a debt due to the Commonwealth.

For Daniel it was argued that Mrs Ringin was the recipient of YAL. The AAT noted, however, that s.559(a) states that YAL becomes payable when 'the person is qualified for the allowance'. A combination of ss.540, 543, 543A and 543B being the qualifying provisions concerning the age of YAL in summary provides entitlement to persons over the age of 16 and under the age of 25. Throughout these provisions, the beneficiary who qualifies for YAL is described as the 'person'. Section 561B(1), by necessary implication, regards the 'person' as the 'recipient'. It says:

> The Secretary may give:
>
> (a) a person to whom a Youth Allowance is being paid on the person's own behalf; or
>
> (b) a person on whose behalf a Youth Allowance is being paid to a parent of the person under section 559E;
>
> a notice that requires the person to tell the Department if:
>
> (c) a stated event or change of circumstances occurs; or
>
> (d) the person becomes aware that a stated event or change of circumstances is likely to occur.

Section 561B(8) provides that a person must not, without reasonable excuse, refuse or fail to comply with a notice if that person is capable of complying with it.

The AAT said that the above analysis is necessary in order to comprehend who is intended to be the 'recipient' of YAL. In the present application, Daniel was the 'recipient'. Mrs Ringin was not