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

undertaking full-time study. She was not under 25 years of age. Therefore, she did not qualify for YAL, as she was not the 'person' for the purposes of qualifying for this benefit. Section 559E(1) provides that payments of YAL to persons under the age of 18 and who are not independent are to be paid 'on behalf of the person'. Subsection (a) relevantly provides that the payment is to be made to the parent of the 'person'. Section 561A(1) must be read in conjunction with s.559E and in the context of Daniel being under 18 years, Mrs Ringin was paid YAL on behalf of Daniel as his parent. She was not the 'person' s.561A contemplates.

Notices

For the Secretary it was argued that Daniel failed to report the change in his circumstances. On the evidence of Mrs Ringin, he would not have been aware of the reporting obligations because she opened his mail from Centrelink, read it and did not inform him of the contents. As a matter of law, however, Centrelink sent notices that were received, and the reporting obligations cannot be frustrated by a person intervening to withdraw mail and not notify a beneficiary of the contents.

Mrs Ringin said that she notified Centrelink of her changed circumstances, that she also notified that the changed circumstances were applicable to Daniel, and that Centrelink should have ceased his benefits. When another notice was received on 26 November 1999, she assumed that Daniel had a continuing entitlement. Payments continued until June 2000 and Mrs Ringin was aware of those payments because they were recorded in bank statements that she received monthly. It was not clear why Mrs Ringin attended Centrelink in June 2000 and eventually arranged for Daniel to personally notify of his changed circumstances. Nonetheless, YAL was paid on behalf of Daniel to a bank account held by Mrs Ringin. There was no entitlement to those benefits because Daniel did not qualify. There is no doubt that beyond November 1999, Daniel did not have an entitlement to YAL. That amount is a debt due to the Commonwealth pursuant to ss.1223(1)(a) and (b) because Daniel was the 'recipient' for the purposes of this section.

In reaching these conclusions, the AAT agreed with the decision *SDFACS & Rowe* 2001 AATA 152. The only reason that the monies were paid to Mrs Ringin was by operation of s.559E of the Act. Daniel personally qualified for YAL and money was paid as a result. He was the person to whom moneys were payable and Mrs Ringin was his trustee for the purposes of the receipt of the moneys. She was obliged to account to him for payments (whether she did so or not) from her account.

The AAT went on to say that to define any person other than Daniel as the recipient would frustrate the object and purpose of the legislation. He was the person who received the notices. They were addressed and sent to him because he was the recipient of a benefit. He could not be the 'recipient' for the purposes of the notices, but not the 'recipient' for the purposes of receipt of payment. Additionally, Mrs Ringin received the moneys into her bank account by operation of law, because at all relevant times Daniel was a minor. A person is a 'recipient' by reason of their qualification to be paid and to receive a benefit (refer also *SDSS & Lyster* 2000 AATA 380).

Formal decision

The AAT set aside the SSAT decision and decided that Daniel was overpaid YAL in the sum of $2288.39, and remitted the matter to the DFaCS to calculate the basis for repayment having regard to Daniel's financial circumstances.

[K.deH.]

Overpayment: rate of payment; whether moneys paid were lump sum payments

SECRETARY TO THE DFaCS and SULLIVAN (No.2002/415)

Decided: 31 May 2002 by B. McCabe.

The issue

The issue before the Tribunal was whether earnings received by Sullivan were to be treated as 'lump sums' for the purpose of calculating his rate of youth allowance and newstart allowance payments.

Background

Sullivan received youth allowance and newstart allowance from January 2000 until October 2001. While receiving benefits, he did some occasional work as a crew member on a fishing trawler, reporting his earnings to Centrelink as required at the end of each trip. He received some $2989 (less $700 paid as an advance) in December 2000, $1936 in January 2001, and $2359 in four payments (in respect of the one cruise) in February–March 2001. Centrelink determined that the payments should be regarded as 'lump sum payments' and, applying the legislative provisions noted below, recalculated Sullivan's entitlement and raised an overpayment. Sullivan appealed to the SSAT which concluded that the income test had been wrongly applied.

The law

Section 1067G-H23A of the *Social Security Act 1991* (the Act) sets out the process for determining how income will affect entitlement to benefits. In particular, that section requires that where a recipient of youth allowance:

> ... receives ... a lump sum amount that ... is paid to him or her in relation to remunerative work ... the person is ... taken to receive one-fifty-second of that amount as ordinary income during each week in the 12 months commencing on the day on which the person becomes entitled to receive that amount.

The term 'income' is defined in s.8(1) of the Act to mean 'an income amount earned, derived or received by the person for the person's own use or benefit ...' The Tribunal noted that an exception to s.1967G-H23A is provided by s.1067G-H24, which allows an alternative approach to the treatment of payments which are made in respect of periods longer that 14 days, providing there is 'reasonable predictability or regularity as to the timing of the payments', and the quantum of the payments concerned.

The decision

The Tribunal noted that the purpose of s.1067G-H23A was to ensure that assessment of entitlement is based on a more accurate picture of a person's income. Noting that the payments were clearly income, but were irregular and unpredictable in quantum, the Tribunal determined that s.1067G-H24 did not apply to Sullivan's situation.

The Tribunal concluded that the first two payments constituted lump sums, and also that the fact that the third amount due to Sullivan was remitted in four instalments in February–March 2001, did not preclude these payments being characterised as a 'lump sum' for pension and benefit purposes. In this regard, the Tribunal noted that '... the expression lump sum [should be used] in contradistinction to regular wage-like payments ...' (Reasons, para. 17), even when the amounts involved were