

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.1067G-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 than 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

remitted in several instalments. All the payments made to Sullivan were thus correctly characterised as 'lump sum' payments and so were subject to the operation of s.1067G-H23A of the Act, and the overpayment was correctly raised by Centrelink.

Formal decision

The Tribunal set aside the decision under review.

[P.A.S.]

Farm help income support: farmer and farming enterprise

SECRETARY TO THE DFaCS and OLIVER

(No. 2002/724)

Decided: 23 August 2002 by R.D. Fayle.

Background

Oliver claimed farm help income support. This claim was rejected by Centrelink. On appeal to the SSAT, Oliver's appeal was successful and the Tribunal found that Oliver was a 'farmer' who was 'effectively in control of the farm enterprise'.

Evidence

Oliver gave evidence that he had been running a piggery in partnership with his mother on his father's property since 1990. Thirty acres of the farm were used exclusively for this purpose. In exchange for labour the partnership was provided with grain for pig feed and Oliver was given rent-free accommodation on the property.

On 30 June 2000, the piggery assets (.30 pigs) were transferred from the partnership to a discretionary trust. This was due to crop failures and insufficient grain to make the business viable. He also sold all moving plant and renovated the pens and yards, on the possibility that if conditions improved he would recommence the business. His work on the property ceased on 20 August 2001. He then set up a handyman business in the local town.

Submissions

The Department submitted that:

- Oliver had no right or interest in land on which the piggery was run as he did not own it and there was no lease.

- Improvements to the piggery belonged to the owner of the land.
- There was no shared farming arrangement between Oliver and his father (the owner of the land).
- When piggery assets were transferred to the trust on 30 June 2000, Oliver forfeited any beneficial interest he may have had in the property.
- Oliver disposed of livestock before 10 August 2001 and any activities that he participated in until he left the property on 20 August were not related to the piggery.
- Oliver did not derive a significant part of his income from the piggery, at least between 30 June 2000 and 20 August 2001. Consequently there was no 'farm enterprise' as stock and equipment had been disposed of by then.

The submissions made on behalf of Oliver were that:

- Oliver had professional training in piggery management and was registered as a pig breeder.
- Oliver sold his piggery because it was no longer viable due to low prices and lack of feed.
- Only the pigs were disposed of on 30 June 2000. The infrastructure remained on the property and Oliver continued working on the farm until 20 August 2001.
- Oliver had an interest in the piggery property and unfettered control of the piggery until he left the property on 20 August 2001.
- The arrangement with Oliver's father concerning sharing the grain was similar to a shared farming arrangement.
- The nature of the work that Oliver did on the farm was linked to the running of the piggery, since one was dependent on the other. Without grain, there would be no feed for the pigs.
- Oliver's circumstances fell within the objects of the Act in that due to circumstances beyond his control he was unable to meet daily living expenses and he was forced to leave the industry.

The law

The relevant legislation is ss.8B and C of the *Farm Household Support Act 1992* and the definition sections relating to the terms 'farm enterprise' and 'farmer'.

farm enterprise means an enterprise carried on within any of the agricultural, horticultural, pastoral, apicultural or aquacultural industries.

farm help scheme payments means payments of the following kinds:

- (a) payments of farm help income support;
- (b) payments of re-establishment grants;
- (c) payments of assistance under the farm help advice scheme.

farmer means a person who:

- (a) has a right or interest in the land used for the purposes of a farm enterprise; and
- (b) contributes a significant part of his or her labour and capital to the farm enterprise; and
- (c) derives a significant part of his or her income from the farm enterprise.

8B Qualification for farm help income support

Subject to this Division, a person is qualified for farm help income support in respect of a period if:

- (a) the period begins on or after the farm help scheme payment commencement day; and

throughout the period, the person:

- (i) is a farmer; and
 - (ii) is at least 18; and
 - (iii) is an Australian resident; and
 - (iv) is in Australia; and
- (c) the person has been a farmer for a continuous period of at least 2 years immediately before the period; and
 - (d) a certificate of inability to obtain finance issued in respect of the person has effect throughout the period.

8C Persons not qualified if Secretary determines that they do not effectively control farm enterprises

A person is not qualified, or ceases to be qualified, for farm help income support in respect of a period if the Secretary determines that:

the person is not effectively in control of the farm enterprise for which the person claims farm help income support; and

farm help income support should not be payable to the person in respect of the period.

The issue

The Tribunal identified that the key issue was whether Oliver was a 'farmer' for a continuous period of two years before he applied for farm help income support on 10 August 2000.

Findings

The Tribunal dealt with the issues raised in turn and concluded that:

- While Oliver's use of the land was not subject to any legal interest or formal lease, the arrangement between Oliver and his father had continued for at least 10 years and Oliver had made struc-