

Youth allowance: waiver and special circumstances

SECRETARY TO THE DFaCS and LINKER
(No. 2001/1393)

Decided: 9 August 2002 by N.Bell.

The issue

The issue before the Tribunal was whether the debt owed by the applicant should be waived in whole or part due to special circumstances.

Background

The Department had sought review of a decision of the SSAT which had affirmed a youth allowance debt of \$483.97 for the period 10 July 2000 to 3 April 2001 and waived recovery of 50% of the debt. The Department contended that there were no special circumstances in the respondent's situation to justify any waiver of the debt.

The respondent was enrolled as a full-time student at the University of Sydney (the University) at the beginning of 2000 and received youth allowance on this basis. On 15 February 2000 and 3 March 2000, the respondent was sent letters by Centrelink notifying what changes of circumstances he had to advise. These changes included ceasing full-time study.

In the second semester of 2000, the respondent became a part-time student but failed to notify Centrelink. He continued to receive youth allowance until 3 April 2001 when he advised that he had ceased study and was about to begin work. A debt was subsequently raised against him for the period that he was a part-time student.

The respondent told the Tribunal that he had the experience in 1999 of having received youth allowance while studying part-time and looking for work and had discussions in 2000 with a Centrelink officer about that receipt of youth allowance which did not result in an overpayment. He also told the Tribunal that he thought that Centrelink was aware of his status as a part-time student because when he arranged his classes for the second semester of 2000 he was told by staff at the University, after they had consulted a computer screen, that his course choices could affect his entitlement to youth allowance. Thereafter, he assumed that the staff at the University informed Centrelink of the study loads of students.

The respondent gave evidence of making an average of 10 to 20 job inquiries every week during the period 10 July 2000 to 3 April 2001. He told the Tribunal that if he had become aware that he was not entitled to youth allowance, he would have applied for newstart allowance.

The respondent told the Tribunal that he had been thrown out of his parents' home during September 1999 and had to live at his girlfriend's parent's home until late in 2001. He said that when he was made to leave his parents' home he felt very isolated and his ability to study had been greatly affected. He gave evidence of reckless expenditure on gambling and alcohol. He also told the Tribunal that while staying overnight at his girlfriend's place in February 2002, the flat where he was then living caught fire, destroying most of his possessions including documentary evidence, furniture and clothing. He had not been insured.

With respect to his current circumstances, he told the Tribunal that he was currently living in shared accommodation. He was not employed nor in receipt of a social security payment. He told the Tribunal that he received some financial assistance from his ex-girlfriend and his mother with whom he has now reconciled. He also told the Tribunal that he had debts of \$6000 for HECS, \$2000 to friends and owed 'countless' moneys to his ex girlfriend and her parents, in addition to any youth allowance debt that he might owe.

The law

There was no dispute that an overpayment had occurred. The critical issue was whether there were grounds for the debt to be waived.

In relation to the issue of waiver of debts, s.1237AAD of the *Social Security Act 1991* (the Act) provides for waiver of a debt where '... there are special circumstances (other than financial hardship alone) that make it desirable to waive ...' provided that the person did not 'knowingly' make a false statement or representation or 'knowingly' fail to comply with a provision of the Act.

Applying, *Callaghan & Secretary DSS* (1997) 2(9) SSR 125 the AAT found, on the civil standard of proof that the respondent did not knowingly fail to comply with a provision of the Act. The Tribunal accepted that the respondent was genuinely confused by his receipt of youth allowance when he was a part-time student in 1999 and thought the University reported changes in study loads.

After referring to *Beadle and DFSS* (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.

In particular, the Tribunal noted:

- the forced departure from his parent's home at the age of 19;
- the consequent difficulties with his studies, lifestyle and living arrangements;
- the confusing effect of his dealings with Centrelink concerning his 1999 youth allowance;
- the destruction of his room and possessions in a fire in February 2002.

The Tribunal considered the SSAT's decision to waive 50% of the debt and found that the reasoning was sound in that the SSAT took into account the competing interests of the public purse and those of the respondent whose circumstances have been found to be special. The AAT considered that the Federal Court's approach in *Secretary, Department of Social Security and Thompson* (1994) 53 FCR 580, which concerned the discretion to disregard compensation paid to a person on the grounds of special circumstances, had equal application to the determination of amounts to be waived under the provisions of s.1237AAD of the Act. Following that approach, the Tribunal considered that given the special circumstances of the respondent and given the public interest in the confinement of payment of income support to those eligible under the Act to receive it, that the appropriate amount to be waived was 50% of the debt.

Formal decision

The Tribunal affirmed the decision under review.

[G.B.]