drug and alcohol problem that he had had since age 15. By the time of the accident, employers, including his family, were no longer prepared to take him on because he was considered not to be a reliable worker.

Following the accident, Robinson spent approximately 27 months in residential, drug and alcohol rehabilitation clinics. The rehabilitation proved successful and from about September 2000, Robinson had been working as a carpenter on a contract basis. The injury to his arm suffered as a result of the accident, had not caused him problems in the type of work he did, being the construction of timber decks and pergolas. During the period from the date of the accident until he had resumed work, Robinson had been paid social security payments.

On 5 December 2000, judgment was awarded in Robinson's favor in respect of his injuries sustained in the accident. The award of damages was $54,271 comprised of $14,000 for non-economic loss under the relevant state motor accidents legislation and $271 for agreed out-of-pocket expenses. The balance, $40,000, was awarded for diminution in future earning capacity. There was no claim for loss of past earnings because Robinson had been unemployed for some months at the time of the accident. The Court noted that 'It appears that his unemployment was wholly or partly related to the fact that at the time he was abusing alcohol and involved with illegal substances'.

Special circumstances: the arguments

On behalf of Robinson, it was argued that he was unable to work after the accident due to his drug dependency problem and it was emphasised that there had been no award of special damages in respect of lost earnings up to the date of the judge's verdict. The submission was that there had been no double dipping by Robinson because there was no causal connection or relationship between the social security allowances he received following the accident and the injuries sustained in the accident. The statement of facts and contentions submitted, had contended that during the period after the accident until he had resumed work, Robinson had not been entitled to compensation for that period and therefore Centrelink was not entitled to recover the amount paid on the basis that Robinson would have been on social security payments notwithstanding the accident.

The Department argued that strict adherence to the statutory provisions dealing with compensation recovery was mandatory and to do so would not amount to a special circumstance, as there was nothing unfair or unjust in following the process laid down in the legislation. Further, it was submitted that the discretion in s.1184 of the *Social Security Act 1991* (the Act) should not be exercised as Robinson's circumstances were not unusual.

Discussion

The Tribunal, while not satisfied that there was anything in Robinson's financial circumstances that was unusual or uncommon, noted the judgments of Neaves J in *Commonwealth v Daniels* (1994) 33 ALD 111 and Drummond J in Secretary, *Department of Family and Community Services v Edwards* (2000) 105 FCR 220 and held that it was relevant to take into account any absence of a causal relationship between a person's social security entitlements and a payment of compensation, as a matter relevant to the exercise of the discretion in s.1184(1) of the Act.

The Tribunal found that neither the sickness allowance nor the newstart allowance that he received during the preclusion period was causally related to the injuries suffered in the February 1997 accident, the incapacity arising therefrom or the compensation awarded in December 2000. It was the Tribunal's view that the social security payments received during the preclusion period were by reason of his alcohol and drug dependency and his attendance at rehabilitation courses. The Tribunal noted that the judge's verdict had not included any assessment for a component of special damages being earnings lost as a result of injuries received in the accident, as opposed to the $40,000 awarded for diminution in future earning capacity.

The Tribunal concluded that there had been no double dipping and considered it would be 'unfair, unintended or unjust' to recover the compensation-affected payments during the preclusion period.

Formal decision

The Tribunal set aside the decision under review and substituted a new decision that, given the special circumstances of the case, the payment of $40,000 being part of Robinson's compensation payment, should be treated as not having been made.

[G.B.]

Compensation: periodic compensation payments; special circumstances

HANRAHAN and SECRETARY TO THE DFaCS (No. 2002/1128)

Decided: 4 November 2002 by Dr J.D. Campbell.

Background

Hanrahan had been involved in two motor vehicle accidents in 1993 and 1994, and after the last accident he had not worked. As a consequence of his work-related accidents, Hanrahan was in receipt of periodic compensation payments, which amounted to $601 gross (or $526 net) a fortnight. In 1995/96, Hanrahan's vision deteriorated to the point that his vision was less than 6/60 in each eye and as a consequence he was deemed to be legally blind. He suffered from a genetic eye disorder, namely Retinitis Pigmentosa. In August 2001, he lodged a claim for a disability support pension (DSP). While, he qualified for DSP, his payment rate was nil because his periodic compensation payment rate was greater than the DSP rate.

Issue

The relevant issue in this matter was whether special circumstances existed that would allow all or part of Hanrahan's periodic compensation payments to be treated as not being paid.

Special circumstances

The *Social Security Act 1991* (the Act) by s.1184 provides that the whole or part of a compensation payment may be treated as not having been made, if it is considered 'appropriate to do so in the special circumstances of the case'. In considering the special circumstances discretion, the Tribunal noted the decisions of *Secretary, Department of Social Security v Smith* (1991) 30 FCR 56, *Secretary, Department of Social Security v Hulls* (1991) 22 ALD 772, *Secretary, Department of Social Security v Ellis* (1997) 46 ALD 1 and *Kirkbright v Secretary, Department of Family and Community Services* (2000) 106 FCR 281, and held that the lack of a causal relationship between injury and benefit is a factor relevant to the determination. The Tribunal found that the compensation injury that gave rise to the compensation periodic payments and the blindness

which gave rise to the claim for DSP were unrelated.

The Tribunal also noted that blindness as the medical condition which led to the claim for DSP is given a particular status under the Act vis-a-vis other medical conditions. The Tribunal noted that it was not subject to the very particular requirements as to assessment and resultant inability to work that other medical conditions were. The Tribunal considered that a particular status is given to blindness because it is a disability that requires particular assistance, in order for the blind person to cope and manage everyday affairs.

The Tribunal found that it was a combination of Hanrahan's blindness and continuing work-related injuries that prevented him from working and restricted his freedom of movement in the wider community. The Tribunal observed that:

> The disability of blindness imposes particular costs upon individuals as they endeavour to move as freely as possible in a wider society, to escape social isolation; to replace previous modes of communication and learning with new modes; and to endeavour to carry on a lifestyle consistent with their disability. The Tribunal also accepts that had blindness occurred as a result of a work related injury, such issues would have been considered in determining the compensation quantum.

The Tribunal found that the lack of a causal relationship between the injury and the benefit had created an environment where the financial imperatives surrounding the pensionable disability of blindness were being unfairly contained by a strict interpretation of the statute. After accepting that Hanrahan's disposable income did not meet his necessary annual expenditure, it found that the unfairness extended to depriving him of some financial assistance that would allow him to maintain his independence, cope with his disability and continue to live in an environment which was compatible with his desire for relative independence. The Tribunal concluded that given these factors, special circumstances existed.

Formal decision

The Tribunal set aside the decision under review and substituted a decision that special circumstances existed and one half of the periodic compensation payments were to be treated as not being, or liable to be paid.

[G.B.]

Newstart allowance: activity test; moving to area of lower employment prospects

SECRETARY TO THE DFaCS and MARKOVIC (No. 2002/908)

Decided: 24 September 2002 by W.J.F. Purcell.

The issue

The issue in this matter was whether Markovic had sufficient reason for his move of residence or, if not, whether he had reduced his employment prospects by moving from Perth to live in Coober Pedy.

Background

Markovic emigrated with his wife from Bosnia to Australia, in 1970. He worked in the construction industry in Western Australia for many years, sustaining a back injury in 1987, and later worked on light duties, in a pizza parlour and casually, ceasing work in December 2000. He and his wife visited Coober Pedy in early 2001, where he met up with his cousins who had previously lived in Perth. The cousins invited Markovic to open a lunch bar adjoining their opal shop in Coober Pedy, which Markovic decided to do. He then approached Centrelink in January 2001 to enquire about newstart allowance (NSA) should the business venture not succeed, stating that he was not applying for any work in Perth as he was about to move to Coober Pedy. His NSA application was refused on the basis that he did not satisfy the activity test. On 2 February 2001 Markovic moved to Coober Pedy, and on 6 February 2001 Centrelink imposed a 26-week non-payment period on him, arguing that he had reduced his employment prospects by moving to Coober Pedy. This decision was affirmed by an Authorised Review Officer, but on 27 April 2001 the SSAT set aside the decision and determined that Markovic did have sufficient reason for moving to Coober Pedy and so satisfied the activity test. The proposed business venture did not eventuate in Coober Pedy, but Markovic remained living there with his wife, and sought alternative employment.

The law

The *Social Security Act 1991* (the Act) provides by s.601(1) that to satisfy the activity test (necessary to qualify for NSA) a person must be '... actively seeking; and ... willing to undertake ... paid work ...'. Sections 634(1) and (3) provide:

> **634.(1)** Subject to subsections (1B) and (2), if, in the opinion of the Secretary, a person has reduced his or her employment prospects by moving to a new place of residence without sufficient reason, a newstart allowance is not payable to the person for 26 weeks.
>
> ...
>
> **634.(3)** For the purposes of subsection (1), a person has a sufficient reason for moving to a new place of residence if and only if the person:
>
> (a) moves to live with a family member who has already established his or her residence in that place of residence; or
>
> (b) moves to live near a family member who has already established residence in the same area; or
>
> (c) satisfies the Secretary that the move is necessary for the purposes of treating or alleviating a physical disease or illness suffered by the person or by a family member; or
>
> (d) satisfies the Secretary that the person has moved from his or her original place of residence because of an extreme circumstance which made it reasonable for the person to move to the new place of residence (for example, the person had been subjected to domestic or family violence in the original place of residence).

In effect, s.634(3) requires that, to be a 'sufficient reason' for moving to a new place of residence, a person must move in order to live with or near a family member, to treat or alleviate a physical illness or disease, or for some extreme circumstance. The term 'family member' is defined in s.23(14) of the Act to include:

> **23.(14)** For the purposes of this Act other than Part 2.11 and the Youth Allowance Rate Calculator in section 1067G, each of the following is a **family member** in relation to a person (the **relevant person**):
>
> (a) the partner, father or mother of the relevant person;
>
> (b) a sister, brother or child of the relevant person;
>
> (c) any other person who, in the opinion of the Secretary, should be treated for the purposes of this definition as one of the relevant person's relations described in paragraph (a) or (b).

Discussion

The Tribunal noted that there was no dispute that the relevant employment prospects and job opportunities were considerably less in Coober Pedy than in Perth. The Tribunal also noted that Markovic's cousins did not fall within the definition of 'family members' as provided in s.23(14) of the Act. Nevertheless, the Tribunal found that Markovic had moved to Coober Pedy to undertake paid work (which, it was ac-