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-

knowledged, did not eventuate), to be near members of his family, and to hopefully improve his own and his wife's health, although the business opportunity was the principal reason for the move. The Tribunal concluded that Markovic had sufficient reason for moving to Coober Pedy, within the provisions of s.634(1) of the Act.

The formal decision

The Tribunal affirmed the decision under review.

[P.A.S.]

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

WATSON and SECRETARY TO THE DFaCS (No. 2002/822)

Decided: 20 September 2002 by J. Cowdroy.

The issue

The issue in this matter was whether Watson should be precluded from receipt of newstart allowance (NSA) because he had moved to an area of lower employment prospects without sufficient reason.

Background

Watson moved from a Sydney suburb to Woolgoolga (near Coffs Harbour) in July 2001, having previously contacted Centrelink about the move on several occasions from May 2001. He suffered from bilateral carpal tunnel syndrome, which was aggravated by colder weather and limited the work he was able to do, and also arthritis, a bad back, and diabetes mellitus. After telephone advice from the Centrelink Call Centre in May 2001 that it would be 'all right' to move, he later had a personal interview with Centrelink in which he was advised that his NSA could be cancelled. However, as at that stage he had purchased a caravan and placed it on-site at Woolgoolga, he went ahead with the move some two months later. His daughter lived some eight hours drive away from Sydney, but only three hours from Woolgoolga, meaning that he was able to see her more often after the move there, and he indicated that he preferred to move to the coast at Woolgoolga as he expected inland areas to be colder and so less suitable to his health.

Watson agreed that the move to Woolgoolga did reduce his employment prospects, but argued that he had moved to be 'near' a family member (his daughter), and also that the move was necessary because of extreme circumstances, namely his health conditions, the climate, the availability of caravan park accommodation, and his reliance on Centrelink advice. Nevertheless Centrelink determined that he had moved without sufficient reason, a view upheld by the Social Security Appeals Tribunal in October 2001.

The law

The *Social Security Act 1991* (the Act) provides by s.634 that NSA is not payable for a preclusion period, if the recipient reduced his employment prospects by moving to a new area without 'sufficient reason'. Section 634(3) lists the circumstances that are to be regarded as being 'sufficient reason' for moving to a new location, and provides:

> **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).

Thus under s.634(3) to be a 'sufficient reason' for a move to a new location, 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 other extreme circumstance. The term 'family member' is defined in s.23(14) of the Act to include a child, hence Mr Watson's daughter fell within that provision.

The key issues in this matter were therefore whether Mr Watson's move to Woolgoolga was to be 'near' his daughter, or otherwise could be characterised as due to 'an extreme circumstance'.

Discussion

The Tribunal noted *McMillan v Barclay Curle & Co Ltd* (1899) 2 F (Ct of Sess) 91 that the 'question of whether one place is near another is entirely a question of circumstances' (quoted in Reasons, para. 36), and determined that a common sense approach was required in this matter. The Tribunal concluded that even though Woolgoolga was nearer in travel time to his daughter's home, than was Sydney, it could not be considered to be 'near' to his daughter when a return journey of six hours was still involved. The Tribunal noted Watson's arguments regarding his health, but considered these were not central to his decision to move, and that the move to Woolgoolga was prompted by a number of reasons. The Tribunal concluded that Watson had not given a great deal of thought to why he chose to live in Woolgoolga, rather than another location. In relation to the issue of 'extreme circumstance', the Tribunal concluded that there was nothing in the applicant's case that could be characterised as 'extreme' and that although the Centrelink advice had been to some extent ambiguous, a clear indication had been given that his NSA payments could be jeopardised before he made his final move to Woolgoolga.

The Tribunal concluded that his move was not one to be 'near' his daughter, not to alleviate his health concerns, nor was there an 'extreme circumstance' sufficient to justify it.

Formal decision

The Tribunal affirmed the decision under review.

[P.A.S.]