

Background

Breaches affecting youth allowance and newstart recipients

Independent reports have established that the breaching regime affecting youth allowance and newstart recipients is harsh and punitive, with many decisions being made without a proper basis or lawful purpose. One of worst types of breach is imposed when Centrelink alleges that someone has moved to an area of lower employment (MALEP) and consequently reduced their chances of finding work. The relevant provision of the *Social Security Act 1991* is s.553B, and it's been around in one form or another for a long time. The severity of breaches under this section comes from the penalty: 26 weeks non-payment, that is six months with no benefit at all.

The usual method for deciding if a MALEP 26-week non-payment period should apply is that Centrelink compare the unemployment rates for the client's current home town with the proposed new residence, and if the new place has a higher unemployment rate than the old one a client is in danger of having a MALEP exclusion period applied. A recent case decided by the Social Security Appeals Tribunal (SSAT) shows how seriously flawed that method can be.

In this case a young woman had been living in a regional centre of New South Wales (City A). She had moved there from a small Queensland country town (Town B) some years before because it was unreasonable for her to live at home with her parents. She decided to visit Town B, and her visit turned into a lengthy stay. Unfortunately, some of the problems that had made it unreasonable for her to live at home years before arose again and she decided to move back to City A. Centrelink imposed a 26-week MALEP non-payment period because the unemployment rate for Town B was 2.8% and for City A 5.6%. The client appealed to an Authorised Review Officer who affirmed the original decision, she then appealed to the SSAT.

The SSAT accepted submissions made on our client's behalf that Centrelink's method for making these decisions is seriously flawed. The first problem is the statistical analysis used by Centrelink as the basis for MALEP

decisions. Centrelink uses the 'Small Area Labour Markets' survey of the Department of Employment and Workplace Relations, for obtaining unemployment rates in differing localities. In this case the difference between Town B and City A was more than 2% and our client was denied her Youth Allowance for six months. However, the SSAT found that this statistical tool was more relevant to assessing adult male unemployment rates, and that it was well known the unemployment picture for women and young people was different. We were able to show that the unemployment picture on a regional level (based on Australian Bureau of Statistics collections) indicated that our client had a better chance of finding a job (based on gender) in City A than Town B. Consequently, Centrelink's statistics could give a general picture only, and were especially unreliable when assessing a young woman's prospects of finding employment.

The second problem with Centrelink decisions under s.553B relates again to the type of statistics it uses, and the fact that comparisons are made between vastly differing localities using very generalised categories. For example, in this case Town B was a small country town heavily oriented towards rural industry, whilst City A is a major regional centre with all the service industries that locate within a city. Simply comparing two general unemployment rates, however based, can mislead a decision maker.

Lest it be thought that any of this is new, the Administrative Appeals Tribunal had referred to similar issues in *SDSS and Prince* (1990) 59 SSR 810.

The SSAT found in favour of our client, basing its decision on a most fundamental principle: when deciding if a person has lowered their employment prospects Centrelink has a duty to make a finding of *fact* based on the individual's relevant circumstances and not rely on a yardstick that may or may not give an accurate picture: there must be a reasonable level of certainty that the Parliament's laws need to be applied to an individual. A similar duty is often imposed on decision makers, but regularly affected by the need for fast decision making within a context of

ever-diminishing resources and harsh government policies.

Once again, the SSAT has shown that administrative law principles have their purpose, at least in part, in furthering the ideals of good public administration.

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