

SOCIAL SECURITY



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Including SSAT Decisions

Opinion

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Budget 2003-2004

There are no major proposed changes in the 2003–2004 Budget affecting social security entitlements. Instead there has been a focus on improved compliance particularly in the areas of:

- Identity fraud;
- Parenting payment to profile customers at risk of failing to declare a change in their circumstances;
- Enhanced reviews for disability support pensioners, youth allowance and student assistance recipients;
- Notification arrangements for people departing Australia, with automatic suspension for customers who fail to notify of their overseas departure, and cancellation of payment for any customer found to be involved in terrorist activities overseas;
- Expanded data-match activities to take advantage of new available data sources such as income reported against Australian Business Numbers, Pay As You Go Payment Summaries from the Australian Taxation Office and Job Network placements in casual employment. There will also be an extension of the risk profiling capability for the Age Pension program to review arrangements for

customers at risk of failing to declare changes in their real estate holdings;

- Collection of child-support payments from non-compliant payers by the Child Support Agency.

Other proposed measures include:

- Limiting the payment of the Pensioner Education Supplement to periods of actual study. From 1 January 2004, the supplement will no longer be paid during extended breaks between periods of study. Students participating in full year or longer courses will be paid over the academic year including the mid-year breaks but excluding the long summer break. Students participating in shorter courses will be paid for the duration of the courses and not over breaks between courses.
- The improved operation of the Assurance Support Scheme. Both 'assurers' and new migrants are intended to benefit from a simplified process with easy access to clear information about their obligations under the scheme. Assurers will receive comprehensive advice in their preferred language about their commitment to provide financial support to the new

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migrant and the implications of this commitment. From 1 July 2004 on, although the Department of Immigration and Multicultural and Indigenous Affairs will continue to determine whether a prospective migrant should be subject to an Assurance of Support, Centrelink will administer the assurance proposal under social security law and will administer the scheme, on behalf of DFACS.

- A reduction in the allowable period of temporary overseas absence for most

pensions and allowances to 13 weeks (from 26 weeks). The measure will not affect people who are overseas at the time of implementation, age pensioners, people receiving pensions that are granted under an international social security agreement with another country, or Austudy payment and youth allowance recipients undertaking approved overseas study.

- Newstart allowance claimants who have child support liabilities will be referred to community-based programs to increase their parenting and

relationship skills, with a view to achieving a higher level of voluntary compliance with child support obligations and reduced periods of unemployment.

- Continued simplification of the social security legislation, in particular a reduction in the number of rate payment calculators and a simpler approach to the legislative provisions dealing with rent assistance.

[A.T.]

Administrative Appeals Tribunal

Austudy: 'particular study period'

SECRETARY TO THE DfACS and ZHANG
(No. 2003/433)

Decided: 7 May 2003 by R.P. Handley.

Background

Zhang claimed and was granted Austudy from March 2001 when he commenced a Bachelor of Information and Communication Technology at Wollongong University. A full-time study load at Wollongong is 48 points per academic year.

He enrolled in five subjects each semester, but, after suffering the theft and torching of his car in late May 2001, amended his enrolment for the 'autumn session', withdrawing from one subject. Loss of the car was traumatic, made transport for him and his family very difficult and involved the loss of study materials necessary for his exam preparation.

In late June, early July 2001, Zhang, still affected by the theft and destruction of his car, consulted university staff who advised him that he should maintain a minimum of 36 points over the year. Accordingly, he amended his 'spring session' enrolment, reducing his enrolment to two subjects, or 12 points. He also completed some subjects in the 'summer' session. He completed a total of 42 points in 2001.

On 30 January 2002, after a data match exercise, Centrelink raised a debt of \$4686.08 for the period 3 July 2001 to 23 January 2002, on the basis that he had not been a full-time student in semester two ('spring' session). On 29 September

2002 the SSAT set aside the decision, determining that the relevant study period was the 2001 academic year, and that Zhang had undertaken full-time study in that period, completing 42 of 48 points.

The law

Section 568 of the *Social Security Act 1991* (the Act) establishes that a person must, among other things, satisfy the activity test to qualify for Austudy. Section 569A provides that the activity test can be satisfied by being a full-time student enrolled in an approved course of education. Section 569C defines full time student:

569C. For the purposes of this Subdivision, a person is a **full-time student** in respect of a course if:

(a) in the case of a person who is enrolled in the course for a *particular study period* (such as, for example, a semester) — the person is undertaking at least three quarters of the normal amount of full-time study in respect of the course for that period; or

(b) in the case of a person who intends to enrol in the course for a particular study period — the person intends to undertake at least three quarters of the normal amount of full-time study in respect of the course for that period.

Section 569E defines normal amount of full time study as the standard student load determined by the institution for that course, under s.39(2) of the *Higher Education Funding Act 1988*.

The issue

The issue to be determined was whether the 'particular study period' was the 2001 academic year, or each semester of that year.

The submissions

The Department referred to the Departmental Guide to Social Security Law which states that student workload should be assessed on a semester basis unless they are undertaking any year long subjects. Zhang was therefore not a full-time student in the 'spring' semester, being enrolled in only 12 points, and having no year long subjects. It was argued that there was no latitude in the legislation for spreading spring session workload over the spring and summer sessions. The facts were distinguished from those in Secretary, *DFaCS and Machan* [2001] AATA 434 in which the institution considered the student full time throughout the year and it was submitted that *Coleman and Secretary to the DfACS* [2002] AATA 772 should be followed.

Zhang argued that when he enrolled in March 2001 he enrolled for the 2001 academic year. Consequently the relevant study period was the 12 months from early March 2001 to late February 2002, in which time he had completed 42 of 48 points (87.5%). He also submitted that if there was a debt it should be waived under s.1237AAD of the Act due to the special circumstances in his case.

The findings

The AAT accepted that the destruction of Zhang's car on 27 May 2001, shortly before exams, had a significant and traumatic effect on him. Also, that he relied on university advice in amending his enrolment and spreading the 'spring' session workload across the 'spring' and 'summer' sessions. He attempted, unsuccessfully, to notify Centrelink of his changed enrolment. He completed 87.5% of the normal full-time workload over the academic year and believed