

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

himself to be a full-time student throughout 2001.

The Tribunal distinguished Zhang's situation from *Machan* because of the character of the thesis subject Machan had undertaken, and because in that case 'results were annual and the emphasis was on yearly enrolment' (Reasons, para. 37). The Tribunal concluded that *Coleman* should be followed.

In the Tribunal's view the bachelor degree in which Mr Zhang enrolled ... was, at least in the first year of the program, organised around semester based or sessional subjects. The particular study period was one semester or session. The fact that students enrolled for both autumn and spring sessions at the beginning of the academic year was a matter of administrative convenience...

(Reasons, para. 39)

The AAT stressed that:

Clarification is required as to the Social Security benefits payable where a student undertakes subjects in a third or summer semester/session during the course of the academic year. Neither the legislation nor departmental policy appears to address this issue adequately.

(Reasons, para. 46)

The circumstances leading to the overpayment were, in the AAT's view, sufficiently unusual to be considered 'special' such that recovery of the debt would be unfair or unjust. Zhang had completed his spring session workload by spreading it over two sessions; he was totally reliant on social security benefits, and was without assets beyond his car, computer and household goods. Interestingly the AAT appears also to allude to a 'notional entitlement' to a different payment:

He has not enriched himself by these events — indeed, quite to the contrary, and the Commonwealth has not suffered financially given that had Centrelink been aware at the relevant time of his part time status he would merely have been transferred to newstart allowance.

(Reasons, para. 44)

#### Formal decision

The AAT varied the decision under review by finding that there was a debt of \$4686.04 and that recovery of the debt should be waived because of the special circumstances of the case.

[H.M.]

## Youth allowance: 'particular study period'

MATHESON and SECRETARY TO THE DFaCS  
(No. 2003/542)

Decided: 10 June 2003 by S. Forgie

#### Background

Matheson started a Bachelor of Arts at the University of South Australia (UniSA) in 1997. She did not study in 1999, and in 2000 resumed, enrolling in 27 units. A full-time workload at UniSA is represented by 36 units per year. In February 2000 and March 2000 Matheson varied her enrolment, resulting in completion of 22.5 units over the year.

Matheson was granted youth allowance from 20 October 2000. In late 2000 she enrolled in 27 units for 2001: three subjects of 4.5 units in each semester. In March 2001, due to the restricted availability of subjects, she amended her enrolment so as to undertake two subjects in semester one and four in semester two.

On 25 January 2002 Centrelink determined that Matheson had not been undertaking full-time study in semester two 2000, or semester one 2001. A debt of \$2628.91 was raised, being youth allowance overpaid between 20 October 2000 and 26 July 2001.

On appeal the SSAT set the decision aside.

#### The law

Section 540 of the *Social Security Act 1991* (the Act) establishes that a person qualifies for youth allowance if, amongst other things, they satisfy the activity test. Sections 541 and 541A provide that one means of satisfying the activity test is 'undertaking full-time study', which is defined by s.541B(1) as follows (emphasis added):

541B.(1) For the purposes of, a person is if:

(a) the person:

(i) is enrolled in a course of education at an; or

(ii) was enrolled in the course and satisfies the that he or she intends, and has (since no longer being enrolled) always intended, to re-enrol in the course when re-enrolments in the course are next accepted; or

(iii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being enrolled) always intended, to enrol in another course of education (at the same or a different educational institution) when

enrolments in the other course are next accepted; and

(b) the person:

(i) is undertaking in the **particular period** (such as, for example, a semester) for which he or she is enrolled for the course; or

(ii) intends to undertake in the next study period for which he or she intends to enrol for the course;

either:

(iii) in a case to which does not apply—at least three-quarters of the normal amount of full-time study in respect of the course for that period (see to ); or

(iv) in a case to which applies—at least two-thirds of the normal amount of full-time study in respect of the course for that period ...

Section 541B(2) provides that one definition of 'normal amount of full-time study' is 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 an academic year, or a semester.

#### Submissions

The Department argued that the reference to a semester in the words of s.541B(1)(b)(i) above is a strong indicator that the particular study period is a semester. Although students enrolled for a year at a time this was a matter of administrative convenience. It would only be appropriate to define the study period as an academic year if the subjects being taken occupied the whole year. Extrinsic materials including explanatory memoranda were cited in support.

Matheson's representative submitted that an uneven study load should be assigned a yearly value, noting that UniSA had considered Matheson a full-time student: charging full-time student fees and issuing a full-time student card.

Conflicting authorities were cited with the Department preferring *Coleman and Secretary to the DFaCS* [2002] AATA 772, while Matheson relied on the general approach of the Federal Court in *Secretary, DFaCS and Gray* (1999) 57 ALD 67 and, more particularly on the AAT's reasoning in *Secretary, DFaCS and Machan* [2001] AATA 434.

#### Discussion

The AAT considered *Gray, Machan, Coleman* and the recent decision of