

that DSP be paid in respect of a period before 16 April 2002.

Formal decision

The Federal Court set aside the AAT's decision and remitted the matter to the AAT for further hearing and determination according to law.

[A.T.]

Youth allowance debt: meaning of 'particular study period'

SECRETARY TO THE DFaCS v MATHESON
(Full Court of the Federal Court of Australia)

Decided: 10 March 2004 by
Tamberlin, Sackville and Finn JJ.

Matheson commenced studies for her degree in 1997. The degree involved a three-year program and it required Matheson to complete courses (ie subjects) amounting to 108 units. Each such course was allotted 4.5 credit points. At the end of 2000 Matheson needed 27 points (ie needed to do six courses) to complete her degree.

On 13 November 2000 she submitted her enrolment for 2001. The enrolment form stated that she was undertaking six courses in that year. All were of semester length, three being taken in semester 1 and three in semester two. However, due to the manner in which the University had scheduled its subjects, Matheson could only undertake two subjects in Semester 1 and four in Semester 2 of 2001. The University considered that Matheson was enrolled as a full-time student in 2001. However, the Department considered that Matheson did not satisfy the requirement of s.541B(1)(b), hence the activity test, in the first semester of 2001. She had previously lodged a claim for youth allowance and had indicated that she was undertaking full-time study and that her 2001 course would be full-time for both semesters. On 25 January 2002 the Department decided to raise and recover from Matheson a debt in respect of overpaid youth allowance payments for a period which included Semester 1 of 2001.

The issue raised in this appeal was whether Matheson was undertaking

full-time study in 'a particular study period' such as to qualify her for youth allowance.

The law

A person is qualified for youth allowance 'in respect of a period if, throughout the period ... [that] person satisfies the activity test'. A person will satisfy the activity test in respect of a period if, as stated in s.541(i)(a):

- (a) the person satisfies the Secretary that, throughout the period, the person is undertaking full-time study (see section 541B).

4 Section 541B(1) provides that a person is undertaking full-time study if:

- (a) the person:
 - (i) is enrolled in a course of education at an educational institution;

... and

- (b) the person:
 - (i) **is undertaking in the particular study period (such as, for example, a semester) for which he or she is enrolled for the course, or ...**

either:

- (iii) in a case to which subsection (1A) does not apply — at least three-quarters of the normal amount of full-time study in respect of the course for that period (see subsections (2) to (4)); or
- (iv) in a case to which subsection (1A) applies — at least two-thirds of the normal amount of full-time study in respect of the course for that period (see subsections (2) to (4)). [Emphasis added]

The decision of the AAT

The AAT stated that the issue of what constituted a particular study period was a question of fact to be decided in each case. The Tribunal considered a variety of factors and concluded that in Matheson's case the particular study period for which she was enrolled for the course was an academic year.

The subjects she studied during that study period were spread between two semesters and each only extended for the length of a semester but s.541B(1) was not referring to the study period for which Ms Matheson was enrolled in a subject but to the study period during which she was enrolled in the course. The focus is not upon the subjects at that stage but upon the course. Whether it was a matter of administrative expediency or not, the fact remains that her enrolment extended across the whole of the academic year even if the individual subjects did not.

The Tribunal went on to conclude that Matheson had undertaken at least three quarters of the normal amount of full-time study for that academic year

and that she had not received payments of the allowance in that period to which she was not entitled.

The decision of the Court

The Department argued that the AAT had erred in its determination that the words 'particular study period' in s.541B(1) referred to the period for which Matheson was enrolled in her course rather than to semester 1 of the 2001 academic year. It was submitted that Matheson's enrolment for 2001 was semester-by-semester.

The Court noted that the difficulty with this submission was that it ultimately raised a question of fact.

The resultant questions thus posed by s.541B(1)(b)(i) and s.541B(1)(b)(iii) can be put as follows:

- (i) what was the particular study period for which she was enrolled for the degree course? And
- (ii) was she undertaking at least three quarters of the normal amount of full-time study in respect of the degree course for that period?

The first of these questions, as the Tribunal correctly recognised, involved a question of fact. As the Tribunal also correctly recognised, the question is not determined simply by the fact that Ms Matheson had completed an enrolment form covering the 2001 academic year. A student can be enrolled at an institution for an academic year, yet 'the particular study period ... for which he or she is enrolled for the course' may be a lesser period, such as a semester.

The words used in s 541B(1)(b)(i) are clearly used and are to be applied according to their ordinary meaning. The Tribunal did not misconstrue the subsection. It recognised the limitations of the evidence before it in reaching a decision as to what was the particular study period for which Ms Matheson was enrolled. Nonetheless, the conclusion arrived at — that the period was the 2001 academic year — was one reasonably open on the facts of the case in light of the words used in the subsection.

(Reasons, paras 18–20)

Formal decision

The Court dismissed the appeal and a cross-appeal by Matheson.

Note: See also: Secretary to the DFaCS v Ung [2004] FCAFC 54 (10 March 2004).

[A.T.]