

week would continue for the next two years and whether Goncalves would benefit within the next two years from participation in a program of assistance or a rehabilitation program.

The Tribunal found that Goncalves was severely disabled at the time of her leaving Australia, continued to be so and would remain so indefinitely.

Formal decision

The Tribunal affirmed the decision under review.

[M.A.N.]

Disability support pension: what is 'work'?

SECRETARY TO THE DFaCS and MARTIN
(No. 2004/569)

Decided: 3 June 2004 by M. Sassella.

Background

Martin was granted disability support pension from February 1997 and his wife was granted newstart allowance from December 1997. Martin's disability support pension was suspended in September 2002 on the grounds that his combined earnings exceeded the allowable limit. In November 2002 a Centrelink delegate raised a debt of \$28,299.59 in relation to disability support pension paid to Martin and \$1445.99 in relation to newstart allowance paid to Mrs Martin.

On review, the authorised review officer varied the amount of the debts and decided that Martin owed \$44,236.24 and Mrs Martin owed \$1321.69.

The matters were appealed to the Social Security Appeals Tribunal which affirmed the decision in relation to Mrs Martin, but found that the amount of Martin's debt was less than \$44,236.24.

The facts

Martin was a partner in a news agency business. He left this business and commenced part-time employment as a high school teacher.

Martin gave evidence that his actual hours were less than 30 hours a week. The principal of the high school gave evidence that when Martin worked five days a week he was expected to complete 18 hours of face-to-face teaching. He had no

planning or marking duties and was not expected to attend meetings.

Documents before the Tribunal suggested that Martin worked seven hours a day, five days a week during periods when he was 'temporary full-time'. The principal stated that these hours reflected the actual hours of opening for the school rather than the hours worked by Martin.

The Department argued that based on the hourly remuneration that Martin must have, at certain times, worked six hours a day. The principal provided information showing that part-time teachers could be paid for hours not actually worked and that he was not required to do additional work in the form of 'yard duty' etc.

Martin contacted Centrelink to advise of his change of employment and provided details of his earnings. He continued to report earnings on a fortnightly basis for a period of time. However, because of the variance between payment cycles for newstart allowance and his earnings, there was an understatement of income which gave rise to Mrs Martin's debt.

The Department's case

The argument put forward by the Department was that when Martin commenced his work as a casual teacher, he was able to work for at least 30 hours a week and was therefore no longer qualified for disability support pension.

Both the Department and Martin agreed that he had never been told to inform Centrelink if he found he could work for at least 30 hours a week.

The law

The relevant legislation is contained in s.94 of the *Social Security Act (1991)*:

Qualification for disability support pension — continuing inability to work

94.(1) A person is qualified for disability support pension if:

- (a) the person has a physical, intellectual or psychiatric impairment; and
- (b) the person's impairment is of 20 points or more under the Impairment Tables; and
- (c) one of the following applies:
 - (i) the person has a continuing inability to work;

...

(5) In this section:

'educational or vocational training' does not include a program designed specifically for people with physical, intellectual or psychiatric impairments;

'on-the-job training' does not include a program designed specifically for people with physical, intellectual or psychiatric impairments;

'work' means work:

- (a) that is for at least 30 hours a week at award wages or above; and
- (b) that exists in Australia, even if not within the person's locally accessible labour market.

The findings

The Tribunal found that the income declared by Martin understated his actual earnings. The Tribunal then went on to consider the main issue, whether Martin was working at least 30 hours a week.

The Tribunal suggested that there were two interpretations of the term 'work'. The first, is that the work must be for at least 30 hours a week and involve physical and/or intellectual effort for the period. The second, is that the work can be for a period less than 30 hours if work is paid on the basis that the person undertook 30 hours or more work.

The Tribunal found that the first interpretation complied with the policy behind disability support pension in limiting this payment to people who are unable to do physical or intellectual work 30 hours a week, whereas the second interpretation may reflect policy based on disability support pension as an income support payment.

The Tribunal favoured the first interpretation, finding that the policy rationale for the second interpretation was reflected through the application of the income test. The Tribunal also found that the *Social Security Act 1991* was beneficial legislation and that the first interpretation was more consistent with this principle.

The Tribunal concluded that Martin had not worked for at least 30 hours a week which meant that his debt was to be recalculated on the basis of his earnings, rather than a lack of qualification.

Formal decision

The AAT affirmed the decision of the SSAT and sent the matter back to Centrelink for recalculation of Martin's debt in accordance with the direction that Martin did not lose qualification for disability support pension through his work as a teacher.

[R.P.]