

Instead the AAT merely determined that the decision made conformed with the Policy.

Secretary, Department of Social Security v Payne
Federal Court of Australia, Kiefel J, 12 February 1999
[1999] FCA 95

Treatment of recovery of overpayment of benefits

Payne commenced to receive disability support pension ('DSP') in November 1993. From October 1994 to June 1995, she received DSP at a rate that was higher than her entitlement, taking into account her income from part-time employment.

A delegate of the Secretary to the Department of Social Security ('the Secretary') decided that Payne was indebted to the Commonwealth in the amount of \$4,024. On review, the Social Security Appeals Tribunal and the AAT decided that Payne had notified her income from employment in November 1994, and that the part of the debt which arose after that date should be waived because it was solely due to administrative error and had been received by Payne in good faith.

In considering the 'good faith' issue, the AAT noted that the Secretary had not disputed the respondent's good faith before the SSAT; that Payne chose not to give evidence before the AAT; and, therefore, there was no basis to justify the AAT disturbing the findings of fact of the SSAT.

The Secretary appealed to the Federal Court, where it was held, allowing the appeal and remitting the matter to the AAT, differently constituted, for reconsideration:

1. The function of the AAT is not restricted to deciding whether the decision under review was correct on the facts before it, or one reasonably arrived at. Its duty to review requires the AAT to make its own assessment and determination, *Drake v Minister for Immigration and Ethnic Affairs* (1979) 46 FLR 409 applied.
2. In the present case, the AAT had the power to consider for itself whether the provisions of s.1237A(1), relating to the obligation upon the Secretary to waive recovery, were made out.
3. Although Payne had declined to give evidence before the AAT, there was relevant and cogent evidence put before the Tribunal which might have weighed against the Tribunal's view as to the credit of Payne, and her state of mind when receiving the payments in question.