

with s.38(5). Geeves did not respond to those notices. On 9 November a delegate of the Employment Secretary sent Geeves a notice under s.44(3) stating that he was being taken to have failed to enter into a case management activity agreement by reason of his failure to attend the two appointments for interviews.

### The issue

Section 44 of the Act sets out the circumstances in which a person can be taken to have failed to enter into a case management activity agreement. Subsection 44(1) provides:

'This section applies if:

- (a) a person has been given notice under subsection 38(5) of a requirement to enter into a case management activity agreement; and
- (b) the Employment Secretary is satisfied that the person is unreasonably delaying entering into the agreement.'

The AAT accepted that Geeves had not received the two notices sent to him. By virtue of s.29 of the *Acts Interpretation Act 1901* and s.23(12) of the *Social Security Act 1991* however, notices sent by mail to the last known address of a person, and not physically received by them, are to be treated as having been 'given'. Therefore, s.44(1)(a) of the Act had been satisfied.

The only issue, therefore, was whether s.44(1)(b) applied, that is, whether the AAT, standing in the shoes of the Employment Secretary, was satisfied that the applicant was unreasonably delaying entering into the case management activity Agreement.

### The evidence

The letters requiring Geeves to attend interviews had been posted to an address in New Town. Geeves had been itinerant with no fixed place of abode from mid-1995 for several months. He then went to live with a friend at the property in New Town. Both Geeves and his friend vacated that address in mid-October 1995, unexpectedly. Geeves stayed at various residences until finding accommodation on 21 November 1995. He did not notify the DSS, the CES or Employment Assistance Australia that he had left the New Town address until 20 November 1995, after he learned of the decision to cancel his newstart allowance. He said that he had not received the letters despite having returned to New Town at least once in search of mail.

### Meaning of unreasonably delaying

The AAT was of the view that 'unreasonably delaying' involved some mental element, such as where a person is aware of an appointment to negotiate an agreement but fails to attend without a reasonable excuse, or where a person

deliberately does not collect or does not bother to collect their mail because they do not wish to receive notification of such an appointment. The AAT was satisfied that Geeves had not deliberately or knowingly refrained from notifying his change of address or from attempting to collect his mail. As a result, his state of mind was not such that he could be said to have unreasonably delayed entering into a case management activity agreement, and s.44 of the Act could not apply.

### Formal decision

The AAT set aside the decision under review and in substitution decided that Geeves' newstart allowance not be cancelled.

[A.T.]

## Overpayment of job search allowance: nature of additional income received

GAFFEY and SECRETARY TO DSS  
(No. 10897)

**Decided:** 1 May 1996 by M.T. Lewis, J.D. Campbell and M.M. McGovern.

Mr Gaffey, an ordained Deacon of the Catholic Church, was in receipt of job search allowance (JSA) between January and November 1994. At the same time he was in receipt of monthly payments from the Roman Catholic Church and intermittent payments from casual employment. JSA was cancelled in November 1994 when the DSS became aware of his other income and an overpayment of JSA of \$6,109.15 was raised.

### Background

Following Mr Gaffey's ordination as a Deacon he left the ministry due to a problematical relationship between himself and Cardinal Clancy. He did not return until 20 years later when he sought Cardinal Clancy's assistance in locating a bishop in south-east Asia who would accept him as a late vocation to the priesthood.

Mr Gaffey was invited to work as a volunteer in a welfare program in the Diocese of Ubon Ratchathani in Thailand and he travelled to Thailand to com-

mence this work in June 1993 returning to Australia in December 1993. While in Thailand Mr Gaffey was provided with food and accommodation.

On his return to Australia Mr Gaffey was hospitalised for treatment in a drug and alcohol unit and his medical costs were paid by the Sydney Archdiocese. Following his discharge from hospital he met with Cardinal Clancy who agreed to ex gratia payments being paid to Mr Gaffey.

In addition to receiving these payments of \$867.50 a month from the church, Mr Gaffey also engaged in casual work for a theatrical agent. Mr Gaffey was in receipt of JSA but did not advise the DSS of the other income he was receiving.

### Status of the ex gratia payments

Mr Gaffey maintained that the payments were reimbursement of expenses and unpaid stipend for the period he spent in Thailand. Cardinal Clancy, however, classified the money as an ex gratia payment payable to Mr Gaffey due to his health and inability to work as a Deacon. The payments were equivalent to the stipend payable to a Deacon. Cardinal Clancy argued that there was no debt to Mr Gaffey in respect of the period he worked in Thailand.

The AAT gave more weight to Cardinal Clancy's evidence and stated that irrespective of the status of the payments, Mr Gaffey had a duty to disclose the payments to the DSS.

On that basis the AAT affirmed the decision under review. As there was some uncertainty as to whether Mr Gaffey's income from casual employment had been taken into account in calculating the debt the AAT referred the recalculation to the DSS.

### Formal decision

The AAT affirmed the decision under review in respect of the cancellation of Mr Gaffey's JSA and remitted the matter to the DSS for recalculation of the amount of debt due to the Commonwealth.

[A.A.]