

Were there 'special circumstances'?

As no claim had been lodged within the required period the question then was whether there were special circumstances allowing the period of lodgement to be extended, as set out in s.102(1)(a) of the Act. (The legislation is set out in *Geidans*, this issue.)

The AAT could find no special circumstances in this case. The fact that Coin had little time to check whether or not she was receiving the allowance due to

extra attention required by her child or that she had posted the claim did not constitute special circumstances.

Reform

The AAT commented once again on the narrowness of s.102 (see *Manzini* (1983) 14 SSR 138).

There is undoubtedly a need for a provision to restrict claims where a number of possible applicants are to be considered eligible for the payment of family allowance for a child, for example, where a child is cared for exclusively in the home of a person

other than its parent, or where a child spends periods of time in the care of different persons and/or institutions. It is however hard to see why the Act should be drawn so as to operate to restrict the payment of family allowance where the child has remained in a stable situation and there are not a number of competing claimants for the allowance.

(Reasons, para. 14)

Formal decision

The AAT affirmed the decision under review.

Sickness benefit: recovery from compensation

EVAGREW and DIRECTOR-GENERAL OF SOCIAL SECURITY

(No. V83/80)

Decided: 28 October 1983 by J.O. Ballard, H.W. Garlick and H.E. Hallowes.

In February 1973, Christopher Evagrew was injured at work. He received worker's compensation payments until August 1974. In September 1973 he was involved in a motor car accident. This led to civil proceedings which resulted in him being awarded \$59,200 compensation in August 1979. He had been in receipt of sickness benefit since September 1973.

The DSS wrote to his solicitors in October 1974 advising them that under s.115 sickness benefit was recoverable after an award of damages and asking them to advise the Department of any award, and to the State Motor Car Insurance Commissioner advising of the *intention* by the DSS to recover 'the whole or some part' of sickness benefit paid in respect of the incapacity suffered in the car accident and also stating that a notice under s.115(6) specifying the amount would be sent in due course. No notice under this section was ever sent.

On 28 September 1979 the State Insurance Office sent to the DSS a cheque for \$14,394.43, this sum being the amount of sickness benefit paid to Evagrew. It appears that the DSS decided to retain \$7,908.57 as the amount re-

covered under s.115. The applicant applied to the AAT for review of the decision to retain this amount.

The legislation

As the relevant legislation was that at the time of the payment by way of compensation and at the time of the various decisions by the DSS the AAT could not take account of the 1979 amendments to the Act.

Section 115(1) then provided that the rate of sickness benefit payable to a person is to be reduced by the amount of compensation the person is receiving or entitled to receive, so long as the sickness benefit and the compensation cover the same period and the same incapacity.

If sickness benefit is paid without any deduction (where compensation comes after the payment of sickness benefit) the DSS may recover an amount equivalent to the overpaid sickness benefit under either sub-section (4) or sub-section (6).

Under sub-section (4), the DSS may recover the overpaid sickness benefit from the person who received the benefit and the compensation payment. Sub-section (4A) gives the Director-General a discretion to release the person from the liability created by sub-section (4) if the Director-General is satisfied that 'special circumstances exist'.

Under sub-section (6), the DSS can recover the overpaid sickness benefit from the person liable to pay compen-

sation to the sickness beneficiary.

No authority to retain money

The Tribunal took the view that as the applicant had not received a payment of compensation s.115(4) was inapplicable and therefore the discretion to waive recovery in s.115(4) could not be invoked.

However, no notice had been served on the insurer as required under s.115(6). This meant the DSS could not retain the money.

In the result [the DSS] has no authority to retain the monies lawfully awarded to the applicant pursuant to the judgment in the civil proceedings. On that basis the whole sum should be paid to the applicant as monies of his wrongly held by the respondent.

(Reasons, para. 15)

Even if Evagrew had received the compensation payment recovery should be waived, thought the AAT:

In our view special circumstances exist having regard, inter alia, to the high medical costs met by the applicant, his continuing need for medical treatment, his legal expenses and having regard to the period during which the applicant was paid no benefit and had to borrow to live.

(Reasons, para. 16)

Formal decision

The AAT set aside the decision under review and substituted a decision that the Director-General refund to the applicant the amount of \$7,908.57.

Special benefit: overpayment

WEINBERG and DIRECTOR-GENERAL OF SOCIAL SECURITY

(No. V82/7)

Decided: 11 November 1983 by R. Balmford, H.W. Garlick and R.A. Sinclair.

The applicant applied to the AAT for review of a DSS decision to recover from her an overpayment of \$1,987.98 in special benefit.

The facts

Mrs Weinberg was granted special benefit from 19 January 1978. She was divorced with two young children. She claimed the benefit because she intended to take leave without pay from her job in December and January to look after her children.

However, she found someone to look after her children and returned to work.

The DSS commenced to send her payments of special benefit and, despite repeated attempts by the applicant to clarify the situation, did not discontinue payment. Finally the DSS made the demand for a refund.

The legislation

Section 124(1) of the *Social Security Act* then read:

The Director-General may, in his discretion, grant a special benefit under this Division to a person —

...
(c) with respect to whom the Director-General is satisfied that, by reason of age, physical or mental disability or

domestic circumstances, or for any other reason, that person is unable to earn a sufficient livelihood for himself and his dependants (if any).

Section 130A read —

A beneficiary who —

(a) commences to engage in paid employment (including casual employment) with an employer;

...

shall, immediately upon so commencing to engage in paid employment ... notify a Registrar accordingly.

Recovery of overpayment

There was no issue of the DSS recovering the overpayment under s.140(1) as it did not arise from a false statement or declaration, failure or omission to comply