

In 1978 the child was diagnosed as suffering from ear infection and, following an operation at the children's hospital in Perth, Garlett was obliged to undertake intensive care of F. In August 1983, she applied to the DSS for a handicapped child's allowance which was granted with effect from that time.

However, the DSS refused to backdate payment of that allowance to the time when Garlett would have become eligible, namely, the beginning of 1979. Garlett then asked the AAT to review that decision.

The legislation

The central question before the Tribunal was whether there were sufficient 'special circumstances' within s.102(1) of the *Social Security Act* to explain Garlett's delay in lodging her claim for handicapped child's allowance. If there were 'special circumstances', payment of the allowance could be backdated to the date of her eligibility (s.102(1) and s.105R).

'Special circumstances'

Evidence was given to the Tribunal that Garlett had spent most of her life in country areas, had experienced very little schooling, was barely literate and had a very poor

memory. Despite these limitations, she had been, in the AAT's words, 'a caring mother figure to the boys she describes as her grandsons', that is, F and another child who had come into her custody at the same time.

Garlett told the Tribunal that she had not known of the existence of handicapped child's allowance, despite being in touch with various welfare and medical agencies over several years. Those agencies had advised her to apply (some time after she started caring for F) for a foster allowance from the State welfare department, but had not mentioned the handicapped child's allowance until 1983. It was clear that she did not, even now, understand what was meant by 'handicapped'.

The AAT referred to the earlier decisions in *Corbett* and *Johns* (1984) 20 SSR 210, 211 and *Cox* (1984) 22 SSR 252, where the circumstances of 'disadvantaged members . . . of a minority group' had been considered:

There is no stereotyped member of this or any similar group since the circumstances of any two members are not the same, and indeed may vary substantially. The picture emerges

of an elderly Aboriginal widow, fostering in a country town a grandson and his half brother, who is a handicapped child. She is barely literate, physically handicapped herself and displays a defective memory. She is shown by the evidence to have been incapable without detailed guidance and assistance of applying for two allowances to which she was entitled.

(Reasons, pp.7-8)

The AAT noted that, although Garlett was not obliged to apply any backpayments for the benefit of F, extending those backpayments would allow her to discharge debts incurred by her in carrying on the household and so better meet the needs of that household.

There were, the AAT concluded sufficient 'special circumstances' to justify backdating the payment of the allowance to the beginning of 1979.

Formal decision

The AAT set aside the decision under review and remitted the matter to the Secretary with a direction that backpayments of handicapped child's allowance for F be made to her for the period from January 1979.

Unemployment benefit: 'benefit week'

HEIDEMANN and SECRETARY TO DSS

(No. N84/571)

Decided: 16 April 1985 by Ewart Smith.

Heather Heidemann was being paid unemployment benefit when, in March 1984, she undertook employment for 8 weeks. The DSS then cancelled her benefit.

Heidemann received her last payment of wages and stopped working on 25 April 1984 (a Wednesday); and, on the following day, she applied to the DSS for unemployment benefit. The DSS decided to treat Heidemann as having been 'unemployed' during the 8 weeks of her employment, so that she would not need to serve the 7-day 'waiting period' normally required by s.119 of the *Social Security Act*.

However, the DSS decided that, if Heidemann's unemployment benefit was to be restored, its restoration should be on the same basis as before she took up her employment. That is, the 'unemployment benefit week' for which she was to be paid, should be from Monday to Friday.

As Heidemann had received her last payment of wages on Wednesday 25 April, the DSS decided that these wages should be treated as her income for the current 'unemployment benefit week', preventing her from receiving any benefit until the next unemployment week, which commenced on Monday 30 April 1984.

Heidemann asked the AAT to review that decision.

The legislation

Section 114 of the *Social Security Act* provides for the reduction of a person's unemployment benefit by reference to that person's income, which (according to s.106(1)) includes 'any personal earnings, moneys . . . earned, derived or received'.

Section 132 provides that unemployment benefits 'shall be paid by instalments in respect of such periods as the Secretary determines'.

'Income' for which period?

The AAT said that the decision of the DSS to treat Heidemann as 'unemployed' during her period of employment had superseded

the cancellation of her benefit. Accordingly, it was appropriate that, when she re-applied for unemployment benefit, the resumed payment of that benefit should be for the same periods as those for which she had been paid benefit before taking up her employment.

Furthermore, the AAT said,

income must be considered over the same week as her unemployment benefit week, and it may be apportioned if received in respect of a period longer than a week (s.106(2)). On that basis, Mrs Heidemann received income in the relevant week; she was paid on the Wednesday of the week in question for the two preceding weeks.

(Reasons, para. 11)

Even when apportioned, the part of Heidemann's fortnightly pay which related to the unemployment benefit week was sufficient to prevent, under s.114, any payment of unemployment benefit to her for that week.

Formal decision

The AAT affirmed the decision under review.

Overpayment: not recoverable

IRWIN and SECRETARY TO DSS

(No. T84/46)

Decided: 21 June 1985 by R. C. Jennings.

Lynne Irwin had been granted a supporting mother's benefit in 1976, which was converted into a supporting parent's benefit in 1977.

In December 1980, Irwin asked the DSS to cancel her benefit because she had just taken up employment. A DSS officer then telephoned her and, after establishing that she was earning around \$127 a week (a figure which would vary from week to week), the DSS decided that her benefit should not be cancelled but reduced.

Irwin was then advised in writing that her benefit had been reduced from \$170 a fortnight to \$54 a fortnight; and that this calculation had been based on her current income of \$254 a fortnight. The letter told Irwin that if her average income increased she should notify the DSS within 14 days.

Over the next 2½ years, the DSS regularly sought information from Irwin's employer about the level of her wages and adjusted her supporting parent's benefit accordingly. However, because this information was collected at scattered intervals, it failed to take account of significant variations in Irwin's income and the DSS even-

tually calculated that she had been overpaid some \$3777 between the end of 1980 and October 1983. The DSS decided to recover that overpayment and Irwin sought review by the AAT.

The legislation

Section 140(1) of the *Social Security Act* provides that an amount of overpayment is recoverable where that overpayment has been made 'in consequence of a failure or omission to comply with any provision of this Act' and where the overpayment 'would not have been made but for the . . . failure or omission'.