

express the discretions not to recover overpayments which had been discussed by the Federal Court in *Hangan* (1982) 11 SSR 115, and *Hales* (1983) 13 SSR 136.

Formal decision

The AAT set aside the decision under review and remitted the matter to the

Secretary for reconsideration of the question whether recovery should be pursued under s.140(2).

Family allowance: late claim

ASHNEY and SECRETARY TO DSS
(No.Q85/194)

Decided: 22 July 1986 by J.B.K. Williams, W.A. DeMaria and H.M. Pavlin.

Margaret Ashney appealed against a decision of the DSS to refuse backpayment of family allowance for her son, B, for some 7 years. B was born in February 1977 and Ashney claimed for family allowance in February 1984.

The legislation

Backpayment of family allowance beyond 6 months of the date of claim can only occur if 'special circumstances' can be made out at the appropriate time: s.102(1)(a) of the *Social Security Act*.

The evidence

Ashney had thought that she was receiving family allowance for B. She discovered that the allowance had not been paid when she examined her bank passbook after moving her account from a bank to a building society. Ashney's husband stated that, though he could not specifically remember filing a claim for family allowance, he was sure he had done so at the time of registering B's birth and presumed the claim had been lost in the mail.

No 'special circumstances'

The Tribunal applied the Federal Court decision in *Beadle and others* (1986) 26 SSR 371. It noted that the claim here was for backdating for some 7 years; that Ashney was receiving family allowance for 5 other children and she could not be said to be 'ignorant of her entitlement'; and that both the applicant and her husband were literate.

'It seems to us that the real explanation of the delay in making the claim arose through inadvertence on the part of the applicant to the fact that the allowance was not being paid with respect to B, a state of affairs which continued for some seven years.'

(Reasons, p.6)

The Tribunal contrasted the facts here with those in *Johns (No 2)* (1986) 27 SSR 388. It concluded that 'special circumstances' had not been made out.

Formal decision

The Tribunal affirmed the decision under review.

LUBKE and SECRETARY TO DSS

(No.Q85/136)

Decided: 2 July 1986 by J.B.K. Williams, N.C. Davis and W.A. DeMaria.

Margaret Lubke appealed against a decision of the DSS to refuse backpayment of child endowment/family allowance for 2 student children. She had claimed in 1984, some 8 and 6 years after eligibility arose for each of her children.

The legislation

Section 103(1) of the *Social Security Act* provided, at the time of the decision under review, that child endowment ceased to be payable if a child attained the age of 16 years, unless the Director-General was satisfied before the expiration of 3 months after the child attained that age that the child became a student child on attainment of that age. Section 102(1)(a) allows backdating in 'special circumstances'.

The facts

The applicant's husband said that no claims had been lodged because he and his wife did not know of their entitlement to student family allowance until they received forms for their third son when he turned 16.

Lubke suggested that stress arising from her husband's ill health (he had suffered a severe heart attack in 1979) had caused the delay in making the claim.

No 'special circumstances'

The AAT quoted from the Federal Court decision in *Beadle and others* (1986) 26 SSR 371 (a handicapped child's allowance case), asserting that the Federal Court's comments were equally relevant to the backpayment of family allowance.

The AAT noted: 'The applicant and her husband at all material times were resident in a city environment. He is by profession an engineer. No problem of isolation or illiteracy exists in this case': Reasons, p.8. It contrasted these facts with those in *Johns* and *Corbett*. The Tribunal concluded that special circumstances did not exist.

Formal decision

The Tribunal affirmed the decision under review.