Family allowance: lodgement of claim

CARBONARI and SECRETARY TO DSS
(No. 6050)
Decided: 18 July by R.A. Balmford.

Carbonari asked the AAT to review a decision of the SSAT in which payment of family allowance was not backdated prior to the family allowance period during which her claim form was received at a DSS Regional Office.

The facts

Carbonari's first child was born on 28 August 1986. She completed a family allowance claim form with the assistance of a friend and asked her friend to post it to the Sunshine Regional Office of the DSS. The form indicated that it could be lodged by post.

The AAT found that this claim 'was not received in the Sunshine Regional Office; and that had it been lodged at another office of the respondent, it would have been forwarded to Sunshine': Reasons, para 4.

As friends told her that 'these things take some time', Carbonari did not inquire about her non-receipt of family allowance until June 1988 when she went to the Sunshine office, was told her claim had not been received and lodged a new claim. Payment was made on the basis of the new claim and not backdated prior to June 1988.

The legislation

As at the date of the child's birth in August 1986 the *Social Security Act* stated that payments of family allowance 'shall not be made except upon the making of a claim' (s.135TA(1)(c)).

By June 1988 the relevant provisions of the Act had been amended. A claim still had to be made (s.158(1)(c)) and backpayment of family allowance was limited to the first day of the family allowance period during which the claim was 'lodged'.

Claim not 'lodged' unless received

The AAT followed an earlier AAT decision in *Coin* (1983) 16 *SSR* 160, in which it was decided that, to be 'lodged', a claim must arrive in the hands of an officer of the DSS or in some way at a DSS office. It therefore held that the initial claim form completed by Carbonari after her child's birth had not been 'lodged'.

Formal decision

The AAT affirmed the decision of the SSAT.

[D.M.]

Family allowance supplement: late claim

ROCKLEY and SECRETARY TO DSS
(No. Q90/56)
Decided: 14 August 1990 by D.W. Muller.

Rockley asked the AAT to review a DSS decision that she not be paid any Family Allowance Supplement prior to 19 October 1989. She had been receiving Family Allowance Supplement until 1 December 1987 when her husband began to receive unemployment benefit. From February 1989, she had been in receipt of unemployment benefit while her husband was farming a property. Her benefit was cancelled on 3 July 1989.

On or about 18 August 1989, Rockley received a letter from DSS informing her of the cancellation and also stating that if a claim for Family Allowance Supplement was made within 6 weeks of the cancellation, payments could continue from the date of cancellation. However, the 6 week period had already expired by the time she received the letter.

Rockley telephoned the DSS office at Cairns and was apparently told that she needed to produce information about taxable income in the financial year ended 1989. She stated that this would not be available until December 1989 but was told to lodge the claim and supply the information later. Rockley told the AAT that she asked for a claim form to be sent but never received one. In October 1989, she came across a claim form and then realised that the relevant year of income was the tax year ended 1988. She immediately claimed Family Allowance Supplement and her claim was granted from 19 October 1989.

Rockley claimed that she should be paid Family Allowance Supplement either from the date of cancellation of unemployment benefit (3 July 1989) or at least from 16 August 1989 (when she claimed to have received wrong advice from DSS).

While the AAT noted that there was no doubt that Rockley was eligible throughout the period, the sections of the *Social Security Act* governing the lodgment of claims (ss.158 and 159) made it clear that no arrears were payable prior to the lodgment of a claim. For that reason, the AAT affirmed the decision under review.

[R.G.]

Family allowance supplement: reduced income

CLEAR and SECRETARY TO DSS
(No. V90/45)
Decided: 19 September 1990 by B.M. Forrest.

Aileen Clear applied to the AAT for review of a decision rejecting her claim for family allowance supplement (FAS) on the basis of the income test.

The legislation

The FAS income test under s.74B(1) of the *Social Security Act* is initially applied to the combined income of married persons derived in the 'base year of income', which is defined in s.72(1) as 'the year of income of the person that ended in the preceding calendar year'. If the couple's combined income has reduced, a request can be made under s.74B(3) to apply the income test to that income. However, a condition for the application of s.74B(3) is stated to be that the couple's combined income 'for the year of income in which the request is made (... "the current year of income") is at least 25% less than the relevant taxable income ... for the base year'.

As Clear had 2 children the FAS income test threshold applicable to her was $23 296.

The facts

Clear lodged a claim for FAS on 7 August 1989 and made a request to apply the income test to reduced income on 29 August 1989.

She and her partner had combined taxable incomes of $23 810 in 1987/88 and $10 617 in 1988/89. The latter figure was made up entirely of unemployment benefit paid to her partner. On 7 July 1989 her partner commenced employment and an estimated combined income of $18 477 for 1989/90 was accepted by both parties before the AAT.