

Administrative Appeals Tribunal decisions

Application for review — a liberal approach

EATT and SECRETARY TO DSS
(No. 8081)

Decided: 3 July 1992 by T.E. Barnett.

The applicant asked the AAT to review a DSS decision to cancel her family allowance payment. On 16 October 1989 the DSS had sent to Eatt a form to review her family income. This form had to be returned within 21 days for the payment to continue in 1990. The form was not returned within that period and the payment was cancelled.

On 5 January 1990 Eatt wrote to the DSS saying that she was unable to provide details of the family income as tax returns had not been submitted by the family due to an accident suffered by her husband. In April 1990 a DSS officer contacted Eatt again and was told that the tax returns had been submitted but not yet assessed.

On 17 October 1990, after her income had been assessed, Eatt lodged a claim for family allowance, requesting that arrears be paid from 28 December 1989. The allowance was paid from 18 October 1990 but no arrears were paid.

The legislation

The *Social Security Act 1947* applied to this appeal.

Section 173 of that Act provided that a person affected by a decision of the DSS could apply to the Secretary for review of the decision.

The effect of s.168(4)(a) was that, where a person applied for review within 3 months of notification of a decision to cancel a payment, the person would be eligible for back payment from the date of the original cancellation.

Was the letter of 5 January 1990 an application for review?

If Eatt's letter of 5 January was treated as an application for review, then it could be said that she applied for review within 3 months of the original notification and thus could be back paid. The Tribunal thought the letter was a request for review:

'After careful consideration of the applicant's letter of 5 January 1990 the Tribunal considers that she was explaining why she had not been able to fill in and return the [review forms] . . . She closed her letter by saying that she was "looking forward to hearing from you in the near future".'

Even although the respondent's previous correspondence had been "mass produced" on a computer at this stage of the proceedings the applicant was entitled to hope that her response would be considered by a human departmental officer who was aware that the respondent is administering beneficial legislation. In the Tribunal's opinion the applicant gave sufficient indication that she did not accept that it was proper to cancel all her family allowance and that she wanted the matter reviewed . . .

(Reasons, p.8)

The AAT also noted that the *Social Security Act* did not require an application for review to be made on any particular form and that the DSS would often be dealing with people under financial and other forms of stress. In such circumstances the legal provisions were to be interpreted 'liberally'.

Formal decision

The AAT set aside the DSS decision and substituted a decision that the applicant be granted family allowance from 29 December 1989.

[B.S.]

Application for review: adequate notice?

SECRETARY TO DSS and
MOULLY

(No. 8137)

Decided: 3 August 1992 by B.G. Gibbs.

On 30 January 1990 Mrs Mouly lodged a claim for family allowance and family allowance supplement (FAS). The latter payment required some evidence of how much rent Mouly was paying. This evidence was produced and she received the pay-

ment. On 25 November 1990 she then completed a form with respect to a review of her entitlement to the family payments. She failed to provide evidence of her rent payments at this time as required.

On 21 December 1990, the DSS requested Mouly to provide details of her income for the last financial year. She claimed that she had provided this information and also sent to the DSS the rent receipt which she had used to prove her rent in January 1990. The DSS claimed that this letter was not received.

On 29 December 1990 the DSS wrote again to Mrs Mouly and advised her that she would not be paid FAS after 27 December 1990 because she had not returned the re-application form. But she was also advised that, as the assets test had changed, a new form would be sent to her and that she would be back paid if the form was returned within 3 months. Mouly returned the form on 25 January 1991 but did not provide evidence of her rent payments.

On 29 January 1991, the DSS advised Mouly that she would receive FAS from 1 January 1991. The letter mentioned the rate at which she would be paid, but did not inform her that the rate had been reduced because no amount was to be allowed for rent assistance. The letter did provide information on how to query the decision.

Mouly said that a DSS officer had told her over the telephone that she would receive arrears of rent allowance. She was unable to contact the DSS again about her rent allowance until 24 May 1991. On 27 May 1991 she wrote to the DSS and enclosed a rent receipt. Her rent assistance was reinstated from 30 May 1991. She claimed back payment of rent assistance from 1 January to 23 May 1991 but this was rejected by the DSS. She successfully appealed to the SSAT. The DSS sought review of that decision.

The legislation

The relevant legislation for this appeal was the *Social Security Act 1947*. Section 173 of that Act provided that a person affected by a decision of the DSS may apply to the Secretary for review of the decision.

Section 168(4)(a) provided in substance that where a person applied for review within 3 months of notification of the decision to cancel the payment