

Callaghan 2(9) SSR 125 which said 'knowingly' should be construed as meaning

'that a person has actual knowledge, rather than constructive knowledge, that he or she is making a false statement or representation or that he or she is failing or omitting to comply with a provision of the Act. That actual knowledge is to be ascertained by reference to the statements of the person as to his or her actual state of knowledge at the time and to events surrounding the false statement or the act or omission.'

Incorrect advice from Centrelink staff

In relation to the misinformation given to Jazazievska by Centrelink staff, the Tribunal referred to the previous AAT decision of *McAvoy (1997) 2(7) SSR 95*, which held that the giving of wrong advice was a special circumstance within the terms of the Act. In that case, the AAT said:

'Citizens are entitled to act upon the advice given to them by representatives of government through its departments and agencies. Citizens are also entitled to have confidence in the advice that they are given by persons in authority and who represent government departments and agencies. Citizens should be entitled to expect nothing less.'

The AAT held that the incorrect advice from Centrelink did constitute 'special circumstances' which warranted a waiver of the debt.

The decision of the AAT

The AAT varied the decision of the SSAT. The first 2 payments were debts to be recovered by the Commonwealth. However, the third payment was waived due to the existence of special circumstances.

The AAT recommended that the overpayments be recovered in a way that did not cause financial hardship to Jazazievska. The AAT said that the installments should not initially exceed \$10 a fortnight.

[H.B.]

Can Centrelink back pay family tax payment?

STEVENS and SECRETARY TO THE DFaCS
(No. 19990270)

Decided: 28 April 1999 by W.G. McLean.

The AAT found that s.900 of the *Social Security Act 1991* (the Act) precluded backpayment.

The facts

Ms Stevens had elected to receive family tax payment (FTP) for the 1997/98 tax year via lodgment of her income tax assessment with the Australian Taxation Office (ATO) by the tax concession known as family tax assistance (FTA). Whilst she was eligible for the support having two small children on a low income (gross taxable income for 1997/98 being \$17,702) due to the circumstances of her taxation for that year she would not receive the payment through the tax system. A Senior Officer of the ATO gave evidence that even if Ms Stevens requested an amended assessment, because total tax and other credits could not exceed tax payable, then Ms Steven's total amended tax refund would only increase by \$85.40, that is, she would be refunded all the tax she had paid, but could not be refunded more. This was substantially less than the \$400 FTP which she could have received if she had elected to claim from Centrelink.

Because of the stress of her marital breakdown she did not realise the negative impact of the additional health insurance rebate which she was required to claim in her 1997/98 tax return on her ability to receive the full FTA entitlement via the ATO. She contended that in such circumstances Centrelink should make the payment. Ms Stevens conceded in her appeal that the law had been correctly applied by the SSAT. In a written statement before the SSAT she requested that commonsense apply and that she be paid her entitlement.

The AAT found that s.900 of the Act precluded payment of FTP before a claim was lodged and there could be no backpayment of FTP in Ms Steven's circumstances.

Stevens wrote to Centrelink seeking an 'Act of Grace' payment. The AAT did not comment, as such, on this request.

Formal decision

The decision under review was affirmed.

[Ca.H.]

Recipient notification notices: 'event or change in circumstances'

ELLIOT and SECRETARY TO THE DFaCS
(No. 19990261)

Decided: 23 April 1999 by J.A. Kiosoglous.

Background

Elliot applied for age pension on 16 November 1995. On 7 December 1995 she was notified that she would be paid pension based on income of \$19,627, and that she was required to notify the Department if her and her husband's combined income exceeded \$377.44 a week. On 6 January 1996 Mr Elliot advised he would be returning to work. His sickness allowance was cancelled but his wife's age pension continued. Mrs Elliot said that on 6 January 1996 and April 1996 she had asked and been advised by a departmental officer that she continued to be eligible for the pension.

Two further notices were sent to Elliot on 18 July 1996 and 2 July 1997 stating that her pension was based on income of \$20,353 and \$29,702 respectively. The letters required her to tell the Department if the income as shown on the letters was incorrect. The income recorded was Elliot's superannuation income and did not include her husband's wages. Elliot did not respond to those notices and a debt was raised. The SSAT determined that there was a recoverable debt owed by Elliot for the period 25 July 1996 to 4 September 1997. There was no debt before this period as Elliot had complied with the first notice sent on 7 December 1995 when she and her husband notified of his return to work on 6 January 1996.

The SSAT stated that the authority for the sending of the notice was to be found in s.68 and s.69 of the *Social Security Act 1991* (the Act). As Elliot did not fail to notify of an event or change of circumstance she had not failed to meet her obligations under s.68 of the Act. However, the SSAT considered that her failure to advise that the income figure maintained was incorrect amounted to a breach of s.69 of the Act, giving rise to a debt under s.1224(1). It was agreed by both parties, and the AAT concurred, that the SSAT had erred in considering the applicant's failure to comply with a provision or requirement in relation to s.69 of the Act, because that section relates only to the