SSAT Decisions

Maternity allowance: qualification for family allowance and the income test

KB

Decided: 5 November 1999

The decision under review was a decision to reject a claim for maternity allowance. KB's claim for maternity allowance was rejected because KB's combined taxable income for the purposes of payment of family allowance, was above the taxable limit. To be paid maternity allowance KB had to be qualified for family allowance in the 13-week period following the birth of her child (s.900B(4)).

The Tribunal considered the qualifications for family allowance set out in s.838 of the *Social Security Act 1991*. KB met all the criteria except that her income exceeded the income ceiling. Section 838(4) states that, the income is a person's *taxable income for that period* plus amounts not relevant in KB's case. The Tribunal noted that this was different from the definition of income in point 1069-H2 which talks about a person's *taxable income for that year*. The term *family allowance period* is defined in s.6(1) as either a calendar year or that part of a calendar year for which a person receives family allowance. The definition is also confined to a person who is receiving family allowance. The term *receiving* is defined is s.23(2) and refers to a person receiving a payment from the earliest day from which it is payable. In KB's case family allowance was not payable to her.

The Tribunal then considered whether the definition *family allowance period* applied to KB. The issue was whether KB was qualified for the family allowance, not whether it was payable. These are separate matters. The definition of *family allowance period* also includes the period when the person first claims. This means that the definition includes those who are claiming the allowance as well as those who are already receiving it.

The Tribunal concluded that KB must meet the qualification criteria for family allowance but not the payability criteria. This meant that KB's taxable income must be less than her income ceiling for the relevant family allowance period. The Tribunal took this to be the 13 weeks from the date KB's child was born. In that 13-week period KB's income on an annualised basis would be under the income ceiling. The Tribunal justified this interpretation by noting that the *Social Security Act* was beneficial legislation, and by referring to the Explanatory Memorandum which states that the income test is to be applied for up to 13 weeks after the child's birth.

[C.H.]

Parenting payment: annualised income

KC.

Decided: 13 December 1999

The decision being reviewed was a decision to recover two debts of parenting payment. KC had two employers in 1999, one for whom she worked casually and the other for two weeks only. She declared the regular casual employment in her three monthly review form, an arrangement she had discussed with Centrelink. In relation to her two weeks of employment, she also advised of this in her three monthly review form

The Tribunal agreed with Centrelink that KC had failed to notify Centrelink within 14 days of commencing work with the second employer. The Tribunal disagreed with the way Centrelink had applied the ordinary income test for the income earned from the second employer. Centrelink treated KC's income by annualising the amount she earned from both jobs and reducing her parenting payment entitlement for two paydays by the amount she had earned over the income limit. In the Tribunal's opinion, this method operated unfairly in KC's case. With the benefit of lindsight, the Tribunal knew that KC worked for only 2 weeks with the second employer. The Tribunal considered that a fairer approach was to average KC's income from both jobs over the usual 13 week period on an annual basis, and then calculate her entitlement to parenting payment in each fortnight over that period on the basis of that average fortnightly income This reduced the overpayment by almost half.

[C.H.]