

Having regard to the Department's error in this case, coupled with Brittain's lack of knowledge of how the family payments system worked, and her responsibility for the care of her partner's mother, the AAT found that special circumstances did exist in this situation, and that the whole of the debt should be waived. In passing, the AAT expressed serious reservation about the Department practice of carrying over estimates from one tax year to the next.

#### Formal decision

The AAT set aside the decision under review and substituted the decision that the debt for the period in question be waived.

[P.A.S.]

## Parenting allowance overpayment: administrative error; good faith

FINLEY and SECRETARY TO THE DFACS  
(No. 19991001)

**Decided:** 22 December 1999 by K. Beddoe.

#### Background

Finley applied for parenting allowance (PA) on 24 February 1997, disclosing in her application that she had a partner. By letter dated 11 March 1997, the Department advised Finley that payment of PA had been approved, the letter also advising her of the obligation to advise the Department should her own or her partner's income exceed certain levels. A later letter in March 1997 incorporated similar notification obligations. Her partner applied for and received newstart allowance (NSA) from 10 March 1997 until 10 October 1997, and between 22 September 1997 and 28 November 1997 was employed in a casual position, earning \$12,218 according to the employer records or \$9330 (according to the Department's records of the partner's declared income) in this period of employment. The Tribunal was unable to conclude as to which figures were those used by the partner on his NSA forms, but it was agreed that he had actually declared substantial amounts of income and that no NSA was paid to him as a result during his period of employment.

Owing to Department error the partner's income was not taken into account in determining the PA to be paid to Finley, as a result of which she was paid both basic PA and additional PA in the period 25 September to 20 November 1997. The Department accepted that she was entitled to basic PA in this period.

The Department sought to raise an overpayment of PA totalling \$1125. On review by an authorised review Officer (ARO) the amount involved was reduced to \$900, the ARO determining that the payment made on 25 September 1997 was not a debt owing to the application of legislative changes to s.1223 of the Act.

#### Legislation

The rate of PA is determined by application of s.1068A-A3 of the *Social Security Act 1991* (the Act) and requires an income test incorporating a partner's income to be taken into account. The Act by s.1223(1) provides that a debt to the Commonwealth may arise in certain situations:

1223.(1) Subject to subsections (1A) and (1B), if an amount has been paid to a person by way of social security payment on or after 1 October 1997 and:

- (a) the recipient was not qualified for the social security payment when it was granted; or
- (b) the amount was not payable to the recipient;

the amount so paid is a debt due to the Commonwealth.

A debt may be waived where the payment in question arose solely due to administrative error and where the payment was received in good faith (s.1237A), whilst further waiver grounds are provided in s.1237AAD which allows waiver where special circumstances can be said to exist. That section reads:

1237AAD. The Secretary may waive the right to recover all or part of a debt if the Secretary is satisfied that:

- (a) the debt did not result wholly or partly from the debtor or another person knowingly:
  - (i) making a false statement or false representation; or
  - (ii) failing or omitting to comply with a provision of this Act or the 1947 Act; and
- (b) there are special circumstances (other than financial hardship alone) that make it desirable to waive; and
- (c) it is more appropriate to waive than to write off the debt or part of the debt.

#### The decision

The Tribunal accepted that Finley, whilst aware of her partner's casual em-

ployment, was unaware of his hours worked or of his income, but knew that he was reporting his earnings through his NSA forms. The Tribunal also accepted, as had the ARO, that Departmental error had occurred in relation to the PA payments in the period in question, by its failure to check the partner's income with the payment of PA, and that this was the cause of the overpayment. The Tribunal held that Finley's failure to tell the Department what it already knew — that is, her partner's earnings — was irrelevant to the occurrence of the overpayment.

The Tribunal then considered whether the PA payments were received by Finley in good faith. The Tribunal noted the decision in *Prince and Secretary, Department of Employment, Education and Youth Affairs 3(3) SSR 37* which considered the meaning of 'good faith' in relation to a similar provision of the *Student and Youth Assistance Act 1973*. In that case the Federal Court had concluded that the focus in relation to good faith should be:

...the state of mind of a person concerning his or her receipt of the payment: if that person knows or has reason to know that he or she is not entitled to a payment received — i.e. is not entitled to use the moneys received as his or her own — that person does not receive the payment in good faith.

In this situation, the Tribunal noted that Finley understood that her partner's income was being reported to Centrelink, and that she had no reason to believe that she was not entitled to payment of PA. Even had she been aware of her partner's income details, the Tribunal concluded it would be unreasonable to expect Finley to be aware whether an overpayment had occurred, given the complexity of the PA calculation process.

#### Formal decision

The Tribunal found that the amount of the debt was \$1125 but that the whole of the amount of the debt should be waived.

[P.A.S.]