**An adjournment**

Condren was not represented at the hearing but he was assisted by two people who were helping him manage his affairs. Condren requested an adjournment to obtain legal advice and representation. This was refused by Lehane J. The judge noted that Condren had represented himself before the AAT, and at all the interlocutory stages before the Court. He was not entitled as a matter of right to legal representation. Lehane J considered what was the appropriate course in the interests of justice, not only to Condren, but also to the Department and the public interest. He found that the case was clear and the question involved was one of law. Condren had the right to appeal if he wished.

**Formal decision**

The Federal Court dismissed the appeal.

**[C.H.]**

# SSAT decisions

***Important note:*** *Decisions of the Social Security Appeals Tribual, unlike decisions of the Administrative Appeals Tribunal and other courts, are subject to stringent confidentiality requirements. The decisions and the reasons for decisions are not public documents. In the following summaries, names and other identifying details have been altered. Further details of these decisions are not available from either the Social Security Appeals Tribunal or the Social Security Reporter.*

## *Parenting payment debt: qualification or rate*

**TC**

**Decided:** 29 February 2000

TC lodged a claim for parenting payment in July 1988. She indicated on the claim form that she did not have a partner. She was paid parenting payment at the single rate. In May 1999 Centrelink became aware that TC had a partner. A debt of nearly $8000 was raised being parenting payment single paid to TC between July 1998 and May 1999. TC's solicitors conceded that TC had been living with a partner throughout the period.

It was argued on behalf of TC that the amount of the debt should be the difference between parenting payment paid at the single rate and parenting payment paid at the married rate taking into account TC's partner's income. The Tribunal referred to s.500 which sets out the qualifications for parenting payment. Other than the residential requirements the person has to have at least one PP child, that is a dependent child. TC had a dependent child. The Tribunal found that TC was qualified for parenting payment throughout the period. The parenting payment was also payable to her according to s.500I. The Tribunal went on to find that TC had been paid parenting payment but at the incorrect rate because she had made a false statement about living with a partner. Therefore there was a debt pursuant to s.1224 and that debt was the difference between the rate of parenting payment single and the partnered rate taking into account TC's partner's income. It was only this amount that had been paid to TC as a result of her false statement.

**Comment**

I have seen a number of cases where this has occurred. It arises out of the amendment making the old sole parent pension part of parenting payment. The qualification and payability criteria are the same for parenting payment single and parenting payment partnered. There is a particular problem with Centrelink raising a debt for the whole of the amount paid to the person during the period rather than taking into account that they were in fact entitled to be paid parenting payment at a certain rate.

## *Carer allowance: savings provisions*

**NL**

**Decided:** 19 January 2000

NL's wife had been in receipt of carer allowance in respect of their daughter A. NL's wife died in August 1999. She had been paid carer allowance under the five-year savings provision which came into force on 1 July 1998. Following his wife's death NL lodged a claim for carer allowance in respect of A. His claim was assessed under the CDA tool and rejected. A suffers from attention deficit hyperactivity disorder. Her score under the tool was less than 1. The evidence showed that A's conduct had deteriorated since her mother's death and there was a possibility she would be diagnosed with reactive conduct disorder.

The Tribunal was satisfied that the treating doctor had correctly completed the questionnaire in relation to A's condition. A's score under the tool was –2.41. Her condition was not an accepted condition and therefore A did not satisfy the qualification criteria. The Tribunal then looked at the savings provisions and found that there were no provisions relating to the transfer of Mrs L's entitlement to her husband. The Tribunal made a suggestion for further action. It noted that A's needs over the period have not reduced but may actually have increased following the death of her mother. If Mrs L had not died, carer allowance would have continued to be paid for A for five years. The Tribunal concluded that the intention of the savings provisions was that carer allowance would continue to be paid in respect of a child like A for five years. It would be appropriate for Centrelink to give consideration to an Act of Grace payment of carer allowance that would have been paid to Mrs L if she had not died.

## *Parenting payment: Income from a business*

**IE**

**Decided:** 28 January 2000

IE was paid parenting payment from November 1997 at the maximum rate. On review it was revealed that IE received half the profits from a plumbing partnership with her husband, and thus Centrelink decided that she was not entitled to receive parenting payment from December 1998 to June 1999. A debt of over $3000 was raised. IE was in partnership with her husband in two separate businesses, the plumbing business and a primary production business of ostrich farming. The plumbing business made a profit and the primary production business a loss. Centrelink stated that IE could not offset one against the other. The authorised review officer noted, however, that for the financial year 1997/98 IE had an income of over $6000 or $244 a fortnight. In notices to her, IE had been required to notify if her income exceeded $167. Therefore IE had failed to notify of an increase in her income. IE argued that Centrelink should have used her taxable income for 1998/99, which was nil. She said she ran a small business agisting horses and providing riding lessons. Her partnership with her husband had been disbanded in June 1999 and it

was extremely difficult to calculate the income from both businesses.

The Tribunal referred to the rate calculator at s.1068B noting that the rate of parenting payment is to be reduced by a person's ordinary income. Ordinary income is defined in s.1072 as a person's gross ordinary income from all sources. Income itself is defined in s.8. Ordinary income from a business can be reduced pursuant to s.1075 by the losses and outgoings relating to the business for the purposes of the Tax Act.

The Tribunal found that IE had income from her horse riding business of over $4000 in 1997/98 and over $2000 in 1998/99. The Tribunal then considered whether the partnership operated by IE and her husband was one business or whether they should consider the plumbing business and the ostrich farming business as two separate businesses. After referring to the Federal Court decision of *Haldane Stevenson* and *Garvey* the Tribunal was satisfied that the losses from the ostrich farming business could not be offset against the plumbing business.

The Tribunal then considered the period over which a person's ordinary income should be maintained. Section 1068B-D19 states that it is to be taken into account over such period not exceeding 52 weeks as the Secretary determines. This enables the Secretary to determine the person's fortnightly income amount that best represents the person's situation. The rate calculator implies that current income is generally the income to be used. Because IE could not estimate her income Centrelink chose to look at her income for 1997/98 for payment from May 1998 onwards. The Tribunal with the benefit of hindsight is able to look at her income in the 1998/99 year. This income was from the horse riding business and the profits from the plumbing business. The losses from the ostrich farming business could not be offset against these. The Tribunal found that there was a debt.

## *Maternity allowance debt: qualification for family allowance*

**KD**

**Decided:** 22 February 2000

KD had a child in March 1999, and lodged a claim for family allowance and maternity allowance in April 1999. Her 1997/98 income precluded her from receiving any payment. She provided an estimate of $35,000+ for her income for 1998/99. Her actual income was nearly $70,000. A debt of family allowance and maternity allowance was raised. KD's income was above the income limit for one child and thus she was not entitled to family allowance. She was also not entitled to maternity allowance. KD stated she got the estimate wrong because she thought it was for the income for the rest of the financial year and not the total financial year.

The Tribunal found that there was a debt of family allowance.

To be paid maternity allowance a person has to be qualified for family allowance in respect of the child on any payday that occurs within 13 weeks of the child's birth (s.900B). To be qualified for family allowance the person's income must not exceed the income ceiling (s.838). Section 838(4) defines 'income' as being for a particular family allowance period and includes the person's taxable income for that period. Centrelink defines the family allowance period to be the appropriate tax year as determined by the rate calculator.

Family allowance period is defined in s.6(1) as either the calendar year or the remainder of the calendar year. However the definition only refers to people who are receiving family allowance. The Tribunal had difficulty finding that a new claimant could be said to be receiving family allowance. Although s.23(2) states that a person is taken to be receiving a payment from the earliest day it is payable, s.41 states that before a payment is payable the person must be qualified for it. The Tribunal concluded that the definition in s.6(1) was intended to apply to new claimants and, therefore, the income which must be looked at is KD's combined taxable income from the date of her son's birth to the end of the year.

The Tribunal then referred to s.1223(1A). Section 1223(1) does not apply to a person in relation to maternity allowance if the person's lack of qualification for family allowance resulted from an event or change of circumstances that occurred after the payment was made, or the person's income for the relevant family allowance period exceeded the person's income ceiling and that income was calculated on an incorrect estimate, and the person did not know that the estimate was incorrect. The Tribunal noted that this section seemed to imply that the income in s.838 was the income for the financial year as determined in s.1069. There was a conflict with the wording of s.6(1) and section 838.

The Tribunal concluded that KD's combined taxable income from the date of her son's birth until the end of the year was clearly under the limit and, therefore, she was qualified to receive family allowance and also qualified for maternity allowance.

## *Activity test breach*

**BH**

**Decided:** 25 February 2000

BH was subject to an activity test breach reduction of 18% for 26 weeks. At BH's request he attended K Employment Services and had an interview for intensive assistance. He entered into a newstart activity agreement. BH was breached for failing to attend a job interview. BH was told about a job as a kitchen hand but not who the employer was. He rang his case manager a number of times during the day in an attempt to obtain an interview. According to BH the case manager could not contact the prospective employer and made an arrangement for BH to come and see him on the next day. The possible job was not discussed.

The Tribunal rang the case manager at K Employment Services during the hearing. The case manager was unclear about when he first knew about a possible job for BH. However, he did state that he contacted BH in the afternoon giving him the name, address and time of the job interview. However, he did not have any record of this contact with BH. The case manager admitted that BH was breached without contacting him to find out why he had not attended the job interview. The case manager seemed uncertain of when events had occurred and exactly what events caused the breach. The Tribunal also had before it evidence from BH's partner. She had recorded in her diary the exact times he was to attend interviews and when he had rung to change those times.

The Tribunal found the case manager's evidence to be based on his unsubstantiated recollection of events months before and internally inconsistent. The diary of BH's partner supported his version of events. The Tribunal also obtained records from Centrelink showing that at the time BH was supposed to be looking for work he had an activity test exemption because of his medical condition. The Tribunal found in the alternative that BH had taken reasonable steps to comply with his newstart activity agreement.

**Comment**

This is an example of the Tribunal taking an investigative role, and not simply relying on evidence presented by the applicant.

**[C.H.]**