

Family payment: notifiable event; family payment period

**SECRETARY TO THE DFaCS and
GALE**

(No. 2000/193)

Decided: 10 March 2000 by
G.L.McDonald.

Background

Gale received family payment in 1996 and 1997. She provided an estimate of \$73,000 on 26 May 1997 after advising the Department that her husband had commenced work on 28 October 1996.

The Department raised a debt of \$1180.80 for the period 10 October 1996 to 22 May 1997 on the basis that her actual income exceeded the estimate provided by her by more than 10%.

Gale appealed to the SSAT which set aside the Department's decision on the basis that there was a debt only for the period 7 November 1996 to 19 December 1996. The debt was \$272.40.

The legislation

The relevant legislation is referred to in the summary of Dyson (above). In addition, the Tribunal considered s.872 of the *Social Security Act 1991* (the Act) which sets out the requirements for a recipient notification notice. Pursuant to s.1069-H6 a 'notifiable event' is an event specified in a notice issued under s.872 of the Act.

Was Gale sent a valid notice requiring her to advise of a notifiable event?

The first issue addressed by the AAT was whether there was a notifiable event in 1996. It was submitted that the letters sent to Gale requiring her to advise of specified events were not 'proper notices' because:

- the period specified in which the recipient was to notify the Department of various events did not end at least 14 days after:
 - (i) the day on which the event or change of circumstances occurred; or
 - (ii) the day on which the recipient became aware that the event or change of circumstances was likely to occur.
- the notices did not specify that they were recipient notification notice given under the Act: and

- the letters did not specify that any particular event was a notifiable event for the purpose of s.1069-H6 of the Act. (Reasons, para. 16)

The Tribunal concluded that the notices were valid.

The fact letters to Mrs Gale do not specify themselves to be 'recipient notification notice(s)' is not fatally defective to the applicant's case. If for no other reason than s.872(3A) provides lack of compliance will not lead to invalidity (see also *Stuart and Secretary, Department of Social Security* (Deputy President Forgie, AAT 12626, 17 February 1998 at paragraph 43). In the view of the Tribunal an ordinary reading of the letters leads to a conclusion that each specifies a particular event, namely whether Mrs Gale or her partner started or recommenced work, or changed jobs, or started self-employment and consequently satisfies s.1069-H6. In the opinion of the Tribunal it is evident from the context of the letters that notification is to be within 14 days of any of the specified events occurring - this is sufficient to satisfy the requirement that the notice 'specify the period within which the recipient is to give the information to the Department' (s.872(3)(d)).

(Reasons, para. 17)

What was the effect of the notifiable event?

The Tribunal concluded that Gale's change of jobs on 28 October 1996 was a notifiable event and that s.886 could be used to recalculate entitlement, giving rise to a debt under s.1223(3) of the Act.

The Tribunal then considered whether the recalculation was '... limited to the remainder of the calendar in which the notifiable event occurred (ie to the end of the calendar year 1996) or whether the period extends to the next calendar year' (Reasons, para. 18).

It had been argued on behalf of Gale that where s.1069-H18 provided for a current year estimate to be used that this was to be used only for the remainder of the family payment period, ie until the end of the calendar year.

The Tribunal disagreed. While not specifically addressing the issue of the definition of 'family payment period' the Tribunal concluded that:

Once the re-calculation occurs, that re-calculation should be the basis of the payment of family payment until another notifiable event occurs or if the person becomes disentitled to receive family payment until a fresh application is made following a change of circumstances.

(Reasons, para. 19)

The Tribunal also considered waiver, but found that s.1237AAD did not apply.

Conclusion

The AAT concluded that there was a debt for the full period — 10 October 1996 to 22 May 1997.

Formal decision

The AAT set aside the decision of the SSAT and the matter was remitted to the Department with a direction that the debt of \$1108.80 was recoverable from Gale.

[R.P.]

[Contributors note: Given the diverse views of the effect of s.1069 H18, it is a pity that there was not a more detailed explanation of the conclusion drawn by the AAT. There was no reference in the Tribunal's analysis to the submission made by Gale, that the phrase 'family payment period' in this section limits the effect of the section to the end of a calendar year. Equally there was no analysis of the legislative support for its conclusion. Sec, in the alternative, the decision of *Dyson* (summarised above).]

Family allowance: annual rate of maintenance income

**SECRETARY TO THE DFaCS and
BLUNDEN**

(No. 2000/273)

Decided: 7 April 2000 by von Doussa J.

Background

Blunden was in receipt of family payment and parenting payment for two children.

She was also from time to time getting maintenance from her former partner paid through the Child Support Agency, though payment by him was erratic and maintenance was owed. In 1998, the Child Support Agency paid to Blunden a sum in excess of \$5000, the result of a garnishee order imposed on superannuation that her former partner was trying to realise prior to leaving the country. The sum paid by the Child Support Agency to Blunden in part consisted of an amount of child support currently owing to her, but the greater proportion of the sum represented arrears of maintenance owed to her from 1994 and 1995.

As a result of the receipt of the child support moneys, Blunden's entitlement to family allowance was reduced to the minimum rate over three paydays (fortnights). Blunden considered this was unfair as she had waited for years for the