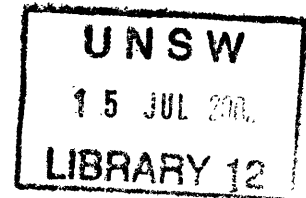


SOCIAL SECURITY



Including SSAT Decisions

Opinion

In this Issue

Budget 2002-2003

Recent initiatives highlighted in the Federal Budget for 2002/2003 in the area of social security include the following:

Payments for the ill and disabled

- Changes to the eligibility criteria for disability support pension so that it will be payable to people only if their disability restricts work capacity to less than 15 hours a week (rather than the current test of less than 30 hours a week). Those 55 years of age and over will no longer have local labour market conditions taken into account in determining their eligibility for disability support pension. These new rules are to apply to new disability support pension applicants from 1 July 2003, whilst current recipients are to be reassessed under the new criteria within five years of implementation (except those with severe disabilities who clearly have no work capacity and those within five years of age pension age).

(Implementation 1 July 2003)

- Restriction of activity test exemptions for newstart allowance and youth allowance recipients. Legislative amendments will be made so that those who are temporarily incapacitated and are unable to work for eight hours or more a week may still be re-

quired to undertake an activity such as rehabilitation or accept referral to disability employment services.

(Implementation 20 September 2003)

- Changes to assessment procedures for disability support pension including new instructions for Medical Assessment services to clarify those circumstances in which it would not be appropriate to assign an impairment rating for a condition because of the possibility of improvement with medical treatment. The instructions are to assist in cases where a person has chosen to undergo medical treatment that can be expected to improve a person's condition within two years. New guidelines are also to be developed to enable Centrelink staff to assess work capacity, including information on how mainstream training can assist those with transferable skills and information on appropriate training courses which could assist a return to work.

(Implementation 20 September 2002)

Work Activity Agreements/Activity test breaches

Implementation of changes announced on 4 March 2002, namely:

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The **Social Security Reporter** is published six times a year by the Legal Service Bulletin Co-operative Ltd. Tel. (03) 9544 0974 ISSN 0817 3524

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Typesetting: Marilyn Gillespie

Printing: Thajo Printing, 4 Yeovil Court, Wheelers Hill 3150

Subscriptions are available at \$66 a year, \$44 for Alternative Law Journal subscribers.

Please address all correspondence to Legal Service Bulletin Co-op, C/- Law Faculty, PO Box 12, Monash University Vic 3800

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Print Post approved PP381667/00178

- Formal review of activity agreements that job seekers are required to negotiate when receiving newstart or youth allowance. At the point of exit from an approved activity there will be a process for closer monitoring of the success or otherwise of the activity. Centrelink will review what the job seeker has done, look at their personal circumstances and any obstacles to participation in the workforce, and plan follow-up activities to further improve employment prospects. *(Implementation 1 July 2002.)*
- Modification of arrangements for job seekers failing to attend job interviews. From 1 July 2002, Centrelink will not be required to immediately impose a breach penalty on job seekers who fail to attend an interview and cannot be contacted. Under the new arrangements, payments will be suspended until the job seeker contacts Centrelink to explain their reasons for non attendance, at which time a decision will be made whether a breach penalty should be imposed. In these circumstances the breach will be an administrative breach rather than an

activity test breach, attracting less harsh consequences (16% reduction in payment for 13 weeks instead of 18% for 26 weeks).

(Implementation 1 July 2002)

- Extension of the activities available to newstart recipients so that activity test breach penalties are waived for people participating in a program of rehabilitation under the Commonwealth Rehabilitation Service or specified vocational training in a labour market program. *(Implementation 1 July 2002.)*

Working Credit

- Introduction of the Working Credit measure from April 2003 (rather than 20 September 2002 as originally announced). This measure was announced as part of the Australians Working Together Package, and aims to encourage people of working age who get income support payments to take up full-time, part-time or casual work by allowing them to keep more of their payments when they first commence work. It is also intended

that there will be simpler ways for assessing employment income for working age pensioners and parents. Changes will also encourage people to take up short-term work by making it easier to get back onto payments after a job ends (for up to 12 weeks).

International agreements

- Four new social security agreements to be negotiated with Croatia, Norway, Slovenia and Switzerland (implementation 2004). New Agreements with Germany and the United States of America commence later in 2002.

Compliance

- Improved strategies for minimising fraud and incorrect payment of benefits including improved processes for updating benefit recipient information, increasing the number of Rent Assistance reviews, and automating the linking of youth allowance records with the records of parents and siblings who are also in receipt of a social security payment.

[A.T.]

Administrative Appeals Tribunal

Family allowance: section 885; whether liability arose after date of repeal

SECRETARY TO THE DFaCS and ROWE
(No. 2002/245)

Decided: 12 April 2002 by S.A. Forgie.

Background

Rowe received family allowance in 1999 and 2000 based on estimated income for 1999/2000. Her actual income exceeded the amount estimated by more than 110% and Centrelink determined that Rowe had been overpaid family allowance and sought to recover a debt of \$1726.50 during the period 25 August 1999 and 2 May 2000.

The facts of this appeal were not in dispute, the sole issue was whether s.885 of the *Social Security Act 1991* could be used to recalculate Rowe's entitlement to payments received between 29 August 1999 to 2 May 2000.

Section 885 was repealed with effect from 1 July 2000. Centrelink raised the

debt on the basis that a liability had arisen and s.885 in conjunction with s.1223(1) gave rise to a recoverable debt.

When this case came before the SSAT, the decision was set aside. In simple terms, it found that s.1223(3) could not be used to raise a debt as, at the time that liability arose, s.885 had been repealed.

The law

Section 885 allowed for a recalculation of family assistance in certain circumstances:

If:

- in working out the rate of family allowance payable to a person, regard is had to the person's income for a tax year; and
- the income to which regard was had consisted of an amount estimated by the person; and
- the person's income for that tax year is more than 110% of the amount of the income on which the determination of the rate of family allowance was based:

the person's rate of family allowance is to be recalculated on the basis of that income.

Section 1223(3) and (4) then allowed for amounts to be raised as a debt as follows:

- Subject to subsection (4), if:
 - an amount (the 'received amount') has been paid to a person by way of family allowance; and
 - the person's rate of family allowance is recalculated under:
 - section 884 (amendment of assessable income); or
 - section 885 (underestimate of income); or
 - section 886 (failure to notify notifiable event); or
 - section 886A (overestimate of child maintenance expenditure); and
 - the received amount is more than the amount (the 'correct amount') of the family allowance payable to the person;

the difference between the amount and the correct amount is a debt due to the Commonwealth.

(4) If:

- a family allowance is paid to a person in a tax year; and
- apart from this subsection an amount of family allowance would become recov-