Summary

- Did Hazim (or another) make a false statement or representation, or did Hazim (or another) fail to comply with a provision of the Act. If so, the AAT must determine whether the false statement etc. caused (that is, contributed to) no decision being made to cancel the social security payments. The AAT must also decide the date any such decision would have been made. Then the AAT must consider whether s.4(4) and/or 24(2) applied. If the AAT does decide that a decision would have been made to cancel payment of the benefits from a certain date, it is then obliged to calculate the amount of the debt.
- The AAT must decide if a false statement etc. was made knowingly. If not, the AAT can then consider if there were special circumstances that would justify waiving all or part of the debt.

Formal decision

The Federal Court set aside the decision under review and remitted the matter back to the AAT to be reheard by a differently constituted panel.

[C. H.]

[**Contributor's Note**: Sections 288 and 289 of the Act set out the date of effect of any decision to cancel payment of sole parent pension if a person complies with a notice (s.288) or fails to comply with a notice (s.289). The Court refers to the difficulty the AAT would have deciding the date of a decision to cancel payment of the pension if a person made a false statement or representation that resulted in the pension continuing to be paid. Sections 288 and 289 set out the dates of effect of any decision to cancel the pension.

The Court did not address the issue raised in the SSAT decision that where a person loses qualification for the sole person pension that qualification can only be restored if the person claims the pension again. So if a person were to lose qualification for the pension by becoming a member of a couple, the person would only qualify for the pension again if they claimed it again. In Hazim's case if she became a member of a couple in 1994 she could not have been qualified for the pension after that date unless she reclaimed it.]

SSAT Decisions

Family tax benefit: reasonable action to obtain maintenance

HM

Decided: 22 November 2001

HM had four children for whom she received family tax benefit at above the minimum rate. A fifth child was born on 28 May 2001, and HM lodged a claim for family tax benefit in respect of this child on 4 June 2001. The claim was accepted and she was paid family tax benefit from the date of the child's birth, but only at the minimum rate, on the grounds that she had not taken reasonable action to obtain maintenance from the father of the child. HM subsequently lodged an application for a Child Support Assessment on 2 August 2001, and was paid the higher rate of family tax benefit. The issue to be determined was whether HM was entitled to be paid the higher rate of family tax benefit from 28 May 2001 until 1 August 2001.

The law

The rate of family tax benefit payable is determined in accordance with the provisions set out in Schedule 1 of the *Family Assistance Act 1999*. In particular clause 10 provides:

> **10.** The FTB child rate for an FTB child of an individual is the base FTB child rate (see clause 8) if:
>
> (a) the individual or the individual's partner is entitled to claim or apply for maintenance for the child; and
>
> (b) the Secretary considers that it is reasonable for the individual or partner to take action to obtain maintenance; and
>
> (c) the individual or partner does not take action that the Secretary considers reasonable to obtain maintenance.

The policy

In reaching its decision, Centrelink relied on the departmental policy guidelines which specified that reasonable action to obtain maintenance required that a claimant apply for a Child Support Assessment within 28 days of their claim for family tax benefit.

What constitutes 'reasonable action'?

The Tribunal noted that the Departmental guidelines were inconsistent with the legislation to the extent that they fettered the discretion contained in clause 10. While lodgement of a Child Support Assessment within a reasonable time frame was considered to be a legitimate criteria on which 'reasonable action' could be considered, it was not legitimate to limit consideration solely to that factor.

The Tribunal stated that whether HM had taken reasonable action to obtain maintenance depended on her behaviour and circumstances at the relevant time. The Tribunal took into account that HM was suffering ill health after the birth, and that the child needed to remain in hospital for some weeks. This impacted on her ability to fully read and understand documentation which notified her of the need to lodge a claim for Child Support Assessment within 28 days of her claim. As soon as she became aware of the requirement in August 2002 to lodge such an application, she did so.

It was also noted that the application for Child Support in respect of the fifth child made no practical difference, as HM was already in receipt of child support at the minimum rate of $5 a week for her other four children, her ex-partner being unemployed. That assessment did not change.

The Tribunal determined that HM had not failed to take reasonable action to obtain maintenance and that she was entitled to family tax benefit at above the minimum rate for her fifth child from 28 May 2001 until 1 August 2001.

[A.T.]

Family tax benefit and maternity allowance: child's residence; whether in adult's care

YL

Decided: 5 November 2001

YL lodged a claim on 15 August 2001 for family tax benefit and maternity allowance in respect of his daughter, J, born on 7 March 2001. The claims were rejected on the basis that J was born in China, was not an Australian resident and was not in YL's care.

The law

Section 21 of the *Family Assistance Act 1999* (the FA Act) requires that a claimant have an FTB child in their care to be eligible for family tax benefit. An FTB child is defined in s.22 to mean: