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Including SSAT Decisions

Opinion

Family Tax Benefit debts

Recently, the Minister for Family and Community Services announced some administrative changes to the family tax benefit scheme to enable families to have more choices about the way in which they choose to receive family tax benefit. For the first two years of the scheme families who have received fortnightly payments, and advised of an increase in income part way through a financial year, have had their payment reduced from that point to reflect the change in income. Unfortunately they still incur debts at the time reconciliation is undertaken at the end of the financial year, because they have been paid for the first part of the financial year on the lower estimate of family income. Many families have found this aspect of the system difficult to comprehend and have been distressed to ultimately find they have incurred a debt, when they have endeavoured to give accurate information about family income to the Family Assistance Office at all times. On 17 September 2002 Senator Vanstone announced:

> Under the new measures, families will have the additional option of asking to be paid at a rate for the remainder of the year that will significantly reduce or wipe out any potential overpayment.

Families will also be given the choice to receive some of their FTB and CCB during the year and the balance at the end.

The Family Tax Benefit is made up of two payments, one of which assists with the cost of children (FTB Part A), and the other which is targeted to single income families (FTB Part B). In the future, families will be able to choose to receive their FTB Part A as fortnightly payments and their FTB Part B as a lump sum at the end of the year, or vice versa. This will help single income families with a partner who is unsure if they will return to work, because they will be able to defer the payment targeted to single income families until the end of the year, while still receiving their FTB Part A payment fortnightly.

Families will also be able to defer their FTB Part A payments for their older teenagers until the end of the year while continuing their fortnightly payments for the younger children. Families are entitled to get FTB Part A for a child aged 16 or more only if the child income for the year is less than $8346. Some families therefore can find that they have been overpaid FTB for older teenagers who enter the workforce part way through the year. This measure will help these families avoid a possible overpayment. If at the end of the year the family is still entitled to FTB for the older children

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they will be topped up for those children with their tax assessment.

Similarly, to assist customers in the FTB A taper zone who are unsure of their annual income, families will be able to choose to receive only the base rate of FTB Part A fortnightly, and get the rest of their annual entitlement as a lump sum at the end of the year. This will ensure that, so long as they earn less than $80,000 (for a family with one child), they will not get an overpayment...

The measures will be made available progressively from November 2002.

More flexibility in payment arrangements is badly needed to assist families on low incomes to manage the new system and avoid debts. Unfortunately it is those families who are in low-income brackets who are most likely to have the largest overpayments if there is an unexpected change in family circumstances. Of course, these are also the families who most need ongoing and regular income support until their circumstances improve. It is to be hoped that the new measures are effectively implemented to ensure that families fully understand their options and are able to make appropriate judgments about the method of payment that is most suitable for their family situation at any given point in time.

The family tax benefit scheme has also considerably tightened those circumstances in which a debt can be waived. The two most common reasons for waiver of a social security debt include overpayments which can be attributed solely to administrative error, and those where there are 'special circumstances' which would justify waiver. Both of these grounds of waiver exist under the family tax benefit legislation. However, an additional criterion must be met if a debt is to be waived on the basis that it arose solely through administrative error and was received in good faith. The decision maker must also be satisfied that the recipient of the overpayment would suffer severe financial hardship if the debt were recovered (s.97(1) of the *A New Tax System (Family Assistance) Administration Act 1999*).

The family tax benefit legislation does not define 'severe financial hardship' (although it is defined for other purposes in the *Social Security Act 1991*, these definitions are unhelpful in the context of s.97(1)). In *Lumsden and Secretary, Department of Social Security* (1986) 10 ALN N225; 34 *SSR* 430, the term 'severe financial hardship' is discussed in the following terms:

The expression 'severe financial hardship' is not defined. In its relevant sense 'severe' means 'hard to sustain or endure; arduous': The Shorter Oxford English Dictionary 1973, pp 1957–8. 'Financial' means 'of or pertaining to finance or money matters': ibid p 752. 'Hardship' includes severe suffering; extreme privation: ibid p 926. 'Severe financial hardship' is the equivalent of 'arduous financial suffering'. The meaning of the words is not in doubt: they are a clear direction by the legislature that the section is only to be applicable when the requisite severity of financial hardship is present.

In addition, pensions, benefits and allowances which the Act provides for persons who fulfil the requirements of the Act are clearly designed to, inter alia, avoid severe financial hardship to persons who would otherwise be without adequate means of support ... in the ordinary case 'severe financial hardship' is a condition that is more likely to be demonstrated by a person whose income is materially less than the current maximum pension.

The Family Assistance Office's Policy Guide to the legislation states:

1.1.S.45 Severe financial hardship

Severe financial hardship should be decided on an individual basis for the purpose of waiving a FAO debt attributable solely to administrative error (which may be up to 100% of the total debt) OR for the purpose of writing-off a FAO debt. The definition of severe financial hardship is to be used when establishing whether a customer would suffer severe financial hardship if they had to repay a debt.

The issue of severe financial hardship should be decided on an individual basis, taking into account the customer's circumstances. These would include:

- the make up of the family group (e.g. single parent, number of children etc),
- current family income and expenses,
- minimum amount of expected repayment under FAO guidelines,
- available funds, AND
- exceptional expenses (e.g. funeral or pharmaceutical costs).

There must be clear evidence that severe financial hardship would result (after reasonable expenses are deducted from income) if recovery of the debt were pursued. Reasonable expenditure includes, but is not limited to: rent, groceries, electricity, minimum loan repayments, school fees, medical costs etc.

The rate of income support including the FA a family group would be paid (if they were eligible), may be used as a benchmark when comparing the family's income and expenditure. If the family's income is greater than this amount but their reported expenditure leaves a net income less than the minimum repayment amount, then it may be relevant to examine whether their expenditure is reasonable.

For the purpose of considering waiver or a write-off, a person would be subject to severe financial hardship if their net fortnightly income (after reasonable expenses are deducted from income) over the debt repayment period would be less than the minimum fortnightly amount the person would be allowed to repay under the flexible repayment arrangements for FA debts.

Thus, the additional criterion under s.97(1) cannot be easily met, especially where deductions are possible from future fortnightly payments. While it is clear that many families consider repayment of an unexpected debt following reconciliation to be a financial hardship, the circumstances in which the test of '**severe** financial hardship' can be met, will be limited to those who are facing some sort of extraordinary expenditure due to their family circumstances or who face other significant debt.

[A.T.]