

Federal Court Decision

Parenting payment debt: whether caused solely by administrative error

SECRETARY TO THE DFaCS v
HOCKING
(Federal Court of Australia)

Decided: 30 October 2002 by
Beaumont J.

The Secretary appealed against a decision of the Administrative Appeals Tribunal (AAT) that the debt owed by Hocking to Centrelink should be waived on the basis that the debt was caused solely by administrative error.

The facts

In June 1997 Hocking applied for and was granted payment of parenting allowance. The payment was paid at a rate that was adjusted to take into account the income of Hocking's wife. Hocking was sent a number of letters that set out the rate of parenting allowance and the income being taken into account. Parenting payment replaced parenting allowance in 1998. Hocking continued to receive the payment adjusted for his wife's income. Mrs Hocking worked as a casual relief teacher and ran a small business that operated at a loss.

In August 1998 Centrelink was advised that Hocking's wife was receiving workers' compensation. She continued to receive compensation in 1999. In October 1999 Centrelink calculated that Hocking owed a debt of \$4318.90 because he had under-declared his wife's income, and in December Centrelink sought recovery of the debt. Hocking questioned the figures Centrelink had used for his wife's income and requested that the decision be reviewed. In August 2000 the debt was recalculated to \$5033.00. On review the authorised review officer (ARO) found that the debt should be calculated on the actual income of Hocking's wife in each fortnightly period. This resulted in a debt of \$4165.50. The ARO decided that the debt should not be waived. The SSAT affirmed the decision of the ARO.

The AAT's decision

Hocking argued before the AAT that he had always provided to Centrelink all the information that had been requested. His wife had repeatedly provided

payslips but Centrelink did not keep copies of these or record when his wife attended. Some of Centrelink's own letters referred to Mrs Hocking having provided information about her income. Hocking agreed that he was aware that he must advise Centrelink of increases in his wife's income. He thought he had contacted Centrelink about an increase in his wife's income between August 1998 and September 1999 but he had no record of this. Mrs Hocking told the AAT that she had thought that she could deduct business losses from her income so the income amount she advised Centrelink was less her business losses.

The AAT found the Hockings to be witnesses *who did their best to provide truthful answers to questions*. The AAT stated that Hocking and his wife had been given the impression by Centrelink that they could deduct business losses from any income. It was established law that business losses could only be subtracted from the income of that business.

The AAT found that there was a debt to the Commonwealth pursuant to s.1224 of the *Social Security Act 1991* (the Act). Mrs Hocking had admitted under-reporting her income because she thought she could deduct business losses. A statement that is untrue as a fact is a false statement. Therefore Mrs Hocking had made a false statement and as a result Hocking had been paid more than he was entitled to receive.

Beaumont J found that even if the statement made by Mrs Hocking was not false it was open to the AAT to find that there was a debt pursuant to s.1223(5) of the Act. That subsection provided that if the amount paid has been incorrectly calculated *for any other reason*, the difference between the amount paid and the amount that should have been paid is a debt. Hocking was paid the incorrect amount because Centrelink acted on the wrong information provided by the Hockings. This was sufficient to establish *for any other reason*.

Waiver

Section 1237A(1) of the Act provides:

Subject to subsection (1A), the Secretary must waive the right to recover the proportion of a debt that is attributable solely to an administrative error made by the Commonwealth if the debtor received in good faith the payment or payments that gave rise to that proportion of the debt.

The AAT accepted that Mrs Hocking had been left with the wrong impression after speaking with a Centrelink officer and thought she could deduct business losses from her income. Even though it was more likely than not the Centrelink officer had given the correct advice:

but that insufficient care had been taken to ensure that it was understood by the [respondent] and Mrs Hocking ... that this 'constitute[d] administrative error by the Commonwealth', and that 'the overpaid amount was attributable solely to the administrative error'.

(Reasons, para. 42)

Beaumont J found:

In my opinion, as a question of law, that confusion on the part of the Hockings, without more, could not amount to an 'administrative error' on the part of Centrelink. Something more was needed, and none was found by the AAT.

(Reasons, para. 55)

Formal decision

The Federal Court set aside the AAT's decision and remitted the matter back to the AAT differently constituted to rehear the matter according to law.

[C.H.]