

SSAT Decision

FTB 'top up' payment

DSL

Decided: 13 January 2003

DSL was refused a 'top-up' payment of family tax benefit (FTB) in respect of the financial year 2000–2001.

On 28 August 2002, DSL telephoned the Family Assistance Office in relation to her FTB. During the course of the phone call she advised that she was not required to lodge an income tax return in the 2000–2001 financial year. As a result of this information DSL's FTB for the 2000–2001 financial year was reassessed by a Family Assistance Officer and DSL was advised by letter dated 30 August 2002 that she had been paid a total of \$974.55 in the 2000–2001 financial year and her correct entitlement under the income test was \$4557.32. The letter also advised that 'You are not entitled to any extra family tax benefit. This is because you did not lodge an income tax return for the 2000–2001 or tell us that you did not have to lodge a tax return by 30 June 2002.' This decision was affirmed by an authorised review officer, purportedly relying upon s.28 of the *Family Assistance (Administration) Act 1999* (the Administration Act).

The SSAT noted that the legislative scheme has strict time limits for claiming family tax benefit 'top-ups'. In particular, if s.28 of the Administration Act applies, where a person has received family tax benefit and that person or their partner is required to lodge a tax return for 2000–2001 tax year, and the person is entitled to family tax benefit for the 2000–2001 financial year, and the person or their partner has not lodged a tax return by 30 June 2002, and no assessment was made by the Taxation Commissioner by 1 July 2002, then variations must be made to the previous determination of Centrelink regarding a persons entitlement to family tax benefit.

The SSAT considered whether s.28 applied. DSL met the first criterion as she was receiving family tax benefit by instalments during the 2000–2001 financial year. The second criterion to be considered was whether DSL or her partner were required to lodge a tax return for that financial year. As her partner was so required, the second criterion

was met. The third criterion in s.28(1) was that her partner did not lodge a tax return by 30 June 2002. This criterion was not met as he lodged his income tax return for the 2000–2001 financial year on 17 August 2001. Both the notice of decision sent to DSL on 30 August 2002 and the authorised review officer stated that as DSL did not notify the Family Assistance Office prior to 30 June 2002 that she was not required to lodge a tax return for the 2000–2001 financial year, then the criteria in s.28 were met. There was simply no legislative basis for this statement. All relevant income tax returns (her partner's only) were lodged and assessed by the due date hence s.28 did not apply to prevent payment of the family tax benefit 'top-up'.

Although s.28 did not prevent payment of the top-up, the SSAT went on to consider whether the date of effect of provisions in the Administration Act would preclude such payment. The legislative scheme provides that the Secretary can review a determination of payment of family tax benefit pursuant to s.104 and s.105 of the Administration Act provided he has sufficient reason to do so. The legislation however applies time limits regarding the date of effect of any 'new' determination that replaces an original determination. In particular s.109E(1) provides that if a person applied to the Secretary for review of an original determination that was made 'earlier than the first day of the income year before the income year in which the application was made', they would not be entitled to receive any additional payment they may have been entitled to receive based on their actual income for the year in question. In this case, DSL's application for review was made on 28 August 2002, that is in the 2002–2003 income year. Section 109E(1) therefore prevented any arrears being paid for a period prior to the first day of the 2001–2002 income year, that is 1 July 2001.

Subsections 109E(2) and (3) provide exceptions to that rule. Put simply, s.109E(2) provides that if special circumstances prevented the person applying for a review of the decision (to pay at a particular rate) within 52 weeks of that decision, then arrears can be paid. In DSL's case however, the decision to pay the base rate of FTB Part A was made in June 2000 and DSL was notified of this decision. She did not ask for a review of

the decision within 52 weeks as she did not know what her and her husband's taxable income would be until August 2001. This was not a special circumstance.

Section 109E(3) provides further exceptions: if the request for review is made because a tax notice of assessment has just been received or an amended tax notice of assessment has been made within 13 weeks of the request for review. Unfortunately neither of those situations applied, therefore there was no provision to pay arrears of family tax benefit to DSL in respect of the 2000–2001 financial year.

The SSAT affirmed the decision under review.

[A.T.]

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