

DFACS concedes but must change policy

A recent decision by the Department of Family and Community Services (DFACS) to withdraw a case from the Administrative Appeals Tribunal (AAT) represents a significant victory for some of the most disadvantaged people in Australia. The case was about the rate of Special Benefit that Australian-born children in the custody of non-citizens should receive. DFACS withdrew its appeal against the client's successful Social Security Appeals Tribunal (SSAT) decision at 4.30pm the day before the AAT hearing.

Since 1991, when similar cases came to the attention of various tribunals, Australian-born children in the custody of non-citizens have received Special Benefit at a rate equivalent to the **"at-home rate of Youth Allowance"** (currently only \$146.40 per fortnight).

ssat decisions

Recently the SSAT has dealt with a number of cases in which it had to review the rate paid to children in this situation. In these decisions the SSAT has consistently recommended that the rate be increased to the equivalent of **"the independent rate of Youth Allowance"** for people under 18, which is \$267.40 per fortnight plus Rent Assistance, if the person qualifies. While the SSAT decisions were significant to the individuals involved in that it provided them with about \$120 per fortnight more on which to survive, there are so few people in this situation that the strain on the public purse would not have been noticeable.

Despite this, DFACS lodged an appeal to the AAT to argue that the rate of Special Benefit paid to Australian-born children in the custody of non-citizens be restricted to \$146.40 per fortnight. DFACS employed a barrister for the case. The withdrawal of the case means that the SSAT decision will be implemented and will save the people involved a lengthy Tribunal hearing and provide them with some much needed funds on which to survive.

maya's story

The case that DFACS withdrew from the AAT involved Maya who was six months old when her mother fled a violent relationship. Maya and her mother were taken in by a women's crisis refuge which has a maximum stay of three months. A claim for Special Benefit was lodged on behalf of Maya as her mother was not eligible for Social Security because of her residential status. Maya's mother had been sponsored for permanent residency by her Australian citizen spouse, but was forced to leave the relationship because of domestic violence before a decision to grant her a visa was made.

Centrelink granted Maya Special Benefit, but in accordance with its policy guidelines, Maya was paid \$146.40 per fortnight. This rate was even less than the Family Allowance that would have been payable on her behalf had her mother been eligible for it, which would have been up to \$251.54 per fortnight (including all the components of Family Allowance).

Finding it impossible to survive on this minuscule amount Maya appealed the decision to restrict payment to \$146.40 per fortnight. The refuge continued to support Maya and her mother beyond the three month period so as to prevent them from slipping further into destitution.

The SSAT's decision to increase Maya's Special Benefit rate allowed the refuge to secure Maya and her mother more stable housing.

no precedent

The DFACS appeal to the AAT would have made this case a test case with the final AAT decision having a bearing on other similar cases. While the DFACS withdrawal means that Maya was able to keep her Special Benefit at the higher "independent" rate, it prevented the possibility of the AAT making a precedent decision.

DFACS has since withdrawn its appeals in three similar fact cases, **but as yet has not amended its policy guidelines** which means that children in Maya's situation will have to appeal to at least the SSAT to receive a rate higher than \$146.40 per fortnight.

If you are assisting a person in a similar situation to Maya, please see the practitioners' guide on page 9 for advice on how to handle the case. ▲