Social Security Appeals Tribunal

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11 March 2011

Mr Robert E Kennedy
NT Office Status of Family
P O Box 988
PALMERSTON NT 0831

Dear Mr Kennedy,

I refer to your further letters dated 15 January 2011 (received on 28 February 2011), 1 March 2011 and 9 March 2011 (received by e-mail).

I will not repeat my earlier response to your complaints about the qualifications of members of this tribunal (the **SSAT**); the treatment of depreciation in considering the "income, property and financial resources" of a party for the purposes of Part 6A of the *Child Support (Assessment) Act 1989*; or the SSAT's making of non-disclosure orders to protect the privacy of the parties.

However, contrary to what you have said in your letter of 1 March 2011, I did not express any view in relation to the findings of the SSAT on the recent review at which you represented a party.

Having listened to the recording of the hearing on 28 January 2011 of that review, I concluded that your criticisms of the hearing are unfounded. At the commencement of the hearing of a child support review, the SSAT must make clear to parties (and any other persons present) that they must not interrupt one another and that any question which a party wishes the other party to answer must be directed to the members who will decide if it is relevant and should be answered. The purpose of a hearing is to afford both parties a reasonable opportunity to address the SSAT and to enable the SSAT to obtain the information which it needs to answer the questions posited by the legislation. That purpose is not fulfilled if the parties are permitted to bicker at the hearing or to interrupt the tribunal members. The party whom you represented was afforded the opportunity to say all that he wished to say and the SSAT accepted his evidence in the Statement of Reasons for its decision.

The *Child Support (Registration and Collection) Act 1988* permits a party to "have another person make submissions to the SSAT on his or her behalf". The legislation does not permit that person to examine a party. I noted that the presiding member thanked you for not

interrupting the parties' evidence, and that the hearing concluded only when you indicated that you had finished your submissions. The closing exchange between you and the presiding member was very cordial.

You have complained to me that you were not permitted to make submissions until the end of the hearing on 28 January 2011. It is entirely a matter for the members conducting a hearing as to when a person may make submissions. However, it is common practice in tribunals for submissions to be made after the evidence has been given so that the submissions can address the evidence.

Although you had not asserted in your written submissions that the other party had not made a written application to the Registrar for a determination under Part 6A of the *Child Support (Assessment) Act 1989*, you asserted in your oral submissions that there was no such application. The tribunal directed your attention to the copy of the application made under Part 6A, which was in the papers which had been provided to you by the SSAT.

The members then clarified that what you meant was that no application had been made under Part 4 of the *Child Support (Assessment) Act 1989* for an administrative assessment of child support. The members indicated that they would pursue this issue. As paragraphs 12 to 14 of the SSAT's Statement of Reasons makes clear, further documents were obtained from the Child Support Agency (**CSA**) and the SSAT made a finding that the other party's application complied with the requirements of Part 4 of the Act.

You seem to be under the mistaken impression that Part 4 of the *Child Support (Assessment) Act 1989* requires an applicant for administrative assessment of child support to complete a form. However, section 27 of that Act requires the application for an administrative assessment to be made "in the manner specified by the Registrar" and section 150A allows the Registrar to specify that the content of an application "is to be made or given orally". The Registrar has specified in the Child Support Agency Guide that applications can be made over the telephone (see Guide 2.1.1).

Finally, your references to members of this tribunal as "officers" and "staff" is inapt and appears to arise from a fundamental misunderstanding of the nature of the SSAT and of the merits review conducted by the SSAT.

The SSAT consists of members who are appointed by the Governor-General (just as federal courts are composed of judges commissioned by the Governor-General). An application to the SSAT for review of a reviewable decision is allocated to one or more members for hearing. The member or members conduct the hearing, make the decision and provide the statement of reasons for the decision. They are not (and cannot be) subject to directions from anyone as to the findings of fact, and ultimately the decision, to be made in a particular case. Members of the SSAT cannot be compelled by anyone to answer questions in relation

to any SSAT review of a decision (just as judges cannot be required to do so in respect of cases adjudicated by them).

As is plain from your letter of 1 March 2011, your request to work with an "officer" of the SSAT is an attempt to persuade members to adopt your interpretations of the child support legislation and to dictate the way in which the members undertake the task entrusted to them by the *Child Support (Registration and Collection) Act 1988*. That request is improper.

The redress provided by Parliament to a party dissatisfied with a decision of the SSAT made under the child support legislation is to appeal to a court with jurisdiction, but the appeal is limited to a question of law.

I do not intend to further correspond with you on these issues.

Yours sincerely

Jane Macdonnell
Principal Member