[2015] AATA 443

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| Division | **GENERAL ADMINISTRATIVE DIVISION** |
| File Number | 2014/4610 |
| Re |  |
|  | APPLICANT |
| And |  |
|  | RESPONDENT |
| And | Confidential |
|  | OTHER PARTY |

# Decision

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| --- | --- |
| Tribunal | **Regina Perton, Member** |
| Date | **24 June 2015** |
| Place | **Melbourne** |

The Tribunal sets aside the decision under review and substitutes a decision that the joined party had less than 35 per cent care of the child on and after 23 May 2010, the date of a child support terminating event, resulting in the joined party ceasing to be an eligible carer of the child and hence no longer entitled to child support payments.

.......................[sgd].................................................

**Regina Perton, Member**

It is noted that publication of this decision is approved by the Administrative Appeals Tribunal pursuant to s 110X(4)(h) of the *Child Support (Registration and Collection Act 1988* (Cth).

CHILD SUPPORT – meaning of care under legislation – no definition of care in legislation – statutory guidelines – whether joined party had actual care of the child while child was overseas and mother in Australia – relevance of child’s age in relation to what constitutes care.

Child Support (Registration and Collection) Act 1988 s 103VA

Child Support (Assessment) Act 1989 ss 5(3), 7B(1), 12(2AA), 54A

Re Drake and Minister for Immigration and Ethnic Affairs (no 2) (1979) 2 ALD 634

Polec v Staker (SSAT Appeal) [2011] FMCAfam 959

P v Child Support Registrar [2013] FCA 1312

Sea Shepherd Australia Limited v Commissioner of Taxation (2013) 212 FCR 252; [2013] FCAFC 68

# *The Child Support Guide* v 4.08 released 11 May 2014

# REASONS FOR DECISION

**Regina Perton, Member**

**24 June 2015**

1. PJCW (the father) and the joined party (the mother) are the parents of a child born in May 2009. There have been, and remain, a number of disputes between them in relation to child support. PJCW has had no direct contact with the child since his birth. The child has spent a considerable part of his life being cared for overseas by his mother’s aunt. The child came back to Australia for short visits and the mother visited him overseas from time to time. The mother, who is single, has stated that she was still the carer of the child while the child was living overseas as she gave directions as to his upbringing and activities and funded his care. PJCW disagrees stating that the mother’s aunt cared for the child while the child was living overseas.
2. At stake is whether PJCW was required to pay child support to the mother while the child was physically outside Australia and being cared for on a day to day basis by another person. That is because the legislative scheme states that a person is only eligible to receive child support as an *eligible carer* if she/he has at least 35 per cent *care* of the child in question. There is no definition of the word *care* in the legislation
3. PJCW was apparently unaware that the child was living overseas for quite some time after the child left Australia and continued to make child care payments on the basis that the mother had 100 per cent care of the child.
4. On 26 February 2014 the Child Support Registrar (CSR) determined that the mother had not been an *eligible carer* of the child from 23 May 2010. The CSR’s delegate determined that there was a *child support terminating event* on 23 May 2010, the date of the child’s departure from Australia to reside in the other country. An internal review officer of the Child Support Agency (CSA) affirmed the delegate’s decision.
5. On 2 June 2014 the mother lodged an application for review with the Social Security Appeals Tribunal (SSAT). On 29 July 2014 the SSAT set aside the CSA’s decision and decided that there was no child support terminating event on 23 May 2010 and that the mother remained an eligible carer of the child.
6. On 5 September 2014 PJCW lodged an application for review with this Tribunal. On 24 October 2014 the Tribunal stayed the operation of the SSAT’s decision.
7. PJCW submits that the construction of the statutory concept of *care* is such that the mother was not the *eligible carer* of the child from the date that the child was principally living in the overseas country whilst the mother remained in Australia. The mother disagrees submitting that she has remained an eligible carer since child support payments commenced.

# RELEVANT LEGISLATION AND case law

1. The Tribunal does not have authority to review all child support matters, being restricted to disputes concerning percentage of care or refusals by the SSAT to grant extensions of time to applicants who have lodged their applications out of time. PJCW submitted that the Tribunal had jurisdiction to deal with this dispute as it concerns a party’s percentage of care of a child and is therefore reviewable pursuant to s 103VA of the *Child Support (Registration and Collection) Act 1988* (the Registration Act). The Tribunal finds that it is a reviewable decision.
2. Section 12(2AA) of the *Child Support (Assessment Act) 1989* (the Act) states:

(2AA) A child support terminating event happens in relation to a child if:

* 1. both of the parents of the child are not eligible carers of the child; and
  2. there are no non‑parent carers entitled to be paid child support in relation to the child

1. Section 7B(1) of the Act provides the definition of *eligible carer*:

In this Act, **eligible carer**, in relation to a child, means a person who has at least shared care of the child.

1. Section 5(3) of the Act sets out what is meant by the term *shared care*:

A person has **shared care** of a child if the person’s percentage of care for the child during a care period is at least 35% but not more than 65%.

1. As stated earlier, there is no definition of the term *care* in the Act. There is, however, a provision that sets out what constitutes *actual care*, namely s 54A:

54A Working out actual care, and extent of care, of a child

(1) The actual care of a child that a person has had, or is likely to have, during a care period may be worked out based on the number of nights that the Registrar is satisfied that the child was, or is likely to be, in the care of the person during the care period.

(2) The extent of care of a child that a person should have had, or is to have, under a care arrangement during a care period may be worked out based on the number of nights that the child should have been, or is to be, in the care of the person during the care period under the care arrangement.

(3) For the purposes of this section, a child cannot be in the care of more than one person at the same time.

…

1. The CSA has prepared publicly available policy guidelines (the Guide) to assist with determinations under the Act. Decision-makers generally apply policy such as the Guide, unless the policy is unlawful or its application produces an unjust result in the circumstances of a particular case (*Re Drake and Minister for Immigration and Ethnic Affairs (no 2)* (1979) 2 ALD 634).
2. In relation to working out the *extent of care*, the Guide states: (at 2.2.1):

**Determining whether care exists**

An object of the Assessment Act is 'that persons who provide ongoing daily care for children should be able to have the level of financial support to be provided for the children readily determined without the need to resort to court proceedings' (section 4(2)(c)). The Assessment Act does not define the term 'ongoing daily care', however the Registrar will take into account a number of factors in determining whether a person cares for a child.

In most cases, it will be relatively clear whether and to what extent a person is caring for a child. However, where there is doubt, the Registrar will consider whichever of the following are relevant to the particular case:

* To what extent the person has control of the child, including having overall responsibility for the child and making:
* major decisions relating to who the child spends time with and the child's health, education, discipline, recreational and/or social activities, and
* arrangements for others to meet the needs of the child.
* To what extent the person meets the needs of the child by providing the child with accommodation, clothing, food, child care, education, health care, emotional support, supervision, transport and extra-curricular activities.
* To what extent the person pays for the costs of meeting the needs of the child.
* To what extent the person otherwise provides financial support for the child.
* To what extent the child provides for his or her own needs or has those needs met from another source.
* To what extent the child is financially independent or financially supported from another source.

1. The Guide does not specifically mention younger children such as the child in this case who was one year old when he was taken overseas to be cared for by his great aunt. The Guide has a commentary relating to older children:

**Older children living away from home**

Generally, older children who live independently and separately from their parents or carers provide for many of their own needs. This may include meeting their own ongoing daily needs (such as meal preparation, transport, socialising, etc.) as well as making their own decisions about their daily activities, schooling and health issues. Therefore, it may be difficult to establish whether a person provides care for an older child who lives separately from that person.

Where a person provides substantial financial support to an older child living away from home, the Registrar will generally consider that financial support as an indicator that the person is continuing to provide care for the child. The support can be in relation to daily costs such as food, accommodation and transport, and/or longer term costs such as school fees, paying for airfares home for holidays, clothing, health and dental care, etc.

While financial support is often a key factor in determining whether a person cares for a child who lives away from home, it will not always be the sole determinant. In cases where the financial support provided is limited, and other factors exist that suggest that the person continues to care for the child, the Registrar will consider whether the person is actively involved in major decisions relating to the child. For example, decisions relating to the child's health, schooling, relationships, career, etc. may be indicators that the person continues to provide care for the child.

1. There have not been any published cases of which the parties or the Tribunal are aware that provide guidance on what constitutes care where a young child is being cared for by a relative outside Australia. There have, however, been matters involving older children such as *Polec v Staker* (*SSAT Appeal)* [2011] FMCAfam 959 (*Polec*) in which Hughes FM considered a case where a teenager, who had been living with his mother, was boarding with someone else after commencing an apprenticeship. The issue was whether there had been a *child support terminating event*. The matter was remitted to the SSAT with the following suggestions at paragraphs 53 to 57:

**Definition of “care” of a child**

53. Given the lack of a relevant statutory definition of “care” of a child, all parties requested that the Court provided [sic] some guidance in relation to the matters that should be taken into account in considering whether and to what extent the first respondent continued to provide care for the child the subject of these proceedings.

54. Counsel for the second respondent submitted that a more helpful version of “the Guide” than the current version is that which existed on 23 January 2008 and which explicitly addresses the issue of determining ongoing daily care for a child. The relevant portion is as follows:

**Ongoing daily care**

There are a number of factors that should be considered in determining whether a person is providing “ongoing daily care”. Some of those factors, which are provided for guidance only, are:

* Living arrangements - where is the child residing and who is making decisions about where the child is residing;
* Daily physical needs - how are the daily needs being met for the child and who is meeting the costs of those needs;
* Social and other activities - who is responsible for making decisions about the child’s daily activities and who is meeting the costs of those activities;
* Representations to others - who takes responsibility for liaising with others about the child’s daily care and how does this occur.

55. The appellant agreed that the 2008 version of the Guide is more helpful than the current version. I have taken both versions into account in attempting to formulate a workable definition.

56. In my view, in determining whether and to what extent a person has care of a child for the purpose of the Child Support (Assessment) Act 1989 and the Child Support (Registration and Collection) Act 1988, it is necessary to consider the following:

a. To what extent does the person meet the needs of the child by providing the child with accommodation, clothing, food, child care, education, health care, emotional support, supervision, transport and extra curricular activities?

b. To what extent does the person make arrangements for others to meet the needs of the child?

c. To what extent does the person pay for the costs of meeting the needs of the child?

d. To what extent does the person otherwise provide financial support for the child?

e. To what extent does the child provide for his or her own needs or have those needs met from another source?

f. To what extent is the child financially independent or financially supported from another source?

57. An analysis of the evidence in relation to these considerations should assist the Tribunal in determining whether or not there has been a child support terminating event or a change in the percentage of care for the child provided by the first respondent.

1. The later Federal Court decision of *P v Child Support Registrar* [2013] FCA 1312 (P) concerns a child at boarding school. Wigney J considered the *Polec* decision and the guidelines suggested by FM Hughes at paragraphs 103 to 109:

103. Mr P contends, in various different ways, that the Tribunal erred in law by failing to follow Polec, or failing to give “paramount consideration” to the financial arrangements for the period of time that Master C spent at boarding school. Neither contention has any merit.

104. In Polec, Hughes FM, in legal and factual circumstances that bear little resemblance to this case, had cause to give consideration to the meaning of “care” in the Act. On appeal from the SSAT, his Honour found that the SSAT had erred in failing to take into account a number of plainly relevant facts and circumstances in considering whether the care of a child had changed when the child ceased living with his mother. Hughes FM found that the Tribunal’s finding that there had been no change to the care arrangements could not be supported on the evidence before it.

105. At the request of both parties, his Honour then went on to provide some “guidance” in relation to the matters that should be taken into account when considering to what extent a person has care for a child for the purposes of the Act. His Honour gave that guidance at [56] of his judgment. That paragraph of the judgment in Polec is extracted in full in paragraph [23] of the Tribunal’s reasons and earlier in this judgment ([39] above).

106. Because his Honour had already found that the SSAT had erred in law in arriving at its finding, it was strictly unnecessary for him to provide this “guidance”. This part of the judgment is accordingly obiter dicta. Nevertheless, paragraph [56] of Polec does indeed provide useful guidance for decision makers in determining the extent of care for the purposes of the Act. As pointed out by the Tribunal in its reasons, the list of questions or considerations outlined by Hughes FM in Polec is not dissimilar to those set out in the Guide. That is not surprising given that Hughes FM drew on previous versions of the Guide to arrive at what he considered to be a “workable definition of care”.

107. In my opinion, however, paragraph [56] of Polec should be approached on the basis that it is no more than what Hughes FM intended it to be; namely a workable guide to assist decision-makers in determining the extent of care. It should not be approached on the basis that it provides some sort of exhaustive check list of matters that it is mandatory for decisions-makers to consider irrespective of the facts and circumstances of the particular case at hand. “Care” is not defined in the Act. The extent of care that is provided is a question of fact. It will depend on the facts and circumstances of the particular case. The meaning of care in any given case should not be constrained by a set list of questions or considerations. Failure to have regard to one of the matters referred to in Polec may or may not invalidate a decision depending on the particular facts and circumstances of the case. On the other hand, in some cases a decision-maker might fall into error by ignoring facts or circumstances that are not in the list in Polec.

108. Nor is Polec authority for the proposition, as Mr P contends, that in all cases where a child is not residing with his or her parents, the financial arrangements for meeting the child’s needs are a “paramount consideration”. Much will depend on the particular facts and circumstances of the matter at hand. The weight to be given to financial arrangements will differ in each case. In some cases financial considerations will be paramount, in some cases they may not.

109. In any event, a fair reading at the Tribunal’s decision reveals that the Tribunal did give consideration to the list of considerations in Polec, and gave particular consideration to the financial arrangements relating to the payment of Master C’s boarding school fees. It found (at [25]) that Mr P and Ms M were on an “equal footing” in respect of most of the Polec considerations. The only potential difference was in relation to the payment of Master C’s school fees. The Tribunal accepted (at [26]) that the payment of the costs of meeting the needs of a child is a factor that should be considered in assessing the extent to which a parent provides care. It is implicit, if not explicit, in the Tribunal’s reasons that the Tribunal accepted that the question of who paid the school fees was a relevant, and potentially important, consideration in determining the extent of care provided by Mr P in the circumstances.

# Was the mother’s percentage of care less than 35 per cent on and after 23 May 2010?

1. The mother disagrees that there was a *child support terminating event* on 23 May 2010 when her son was taken overseas for his care. The mother has made a number of statements to the CSA and other bodies which are contained in over 1000 pages of T Documents and were also summarised in the SSAT’s decision. Her aunt has also provided statements. In essence, the mother stated that she had asked her aunt, who had effectively raised her as a child, to care for her son while she remained in Australia because of her employment. Her aunt and aunt’s husband had stayed with her in Australia for part of the child’s first year to help care for him but were restricted to visitor visas lasting three months. The mother has no family in Australia. She had difficulty finding appropriate child care. She obtained child care temporarily at a facility in the CBD but was not happy with it. She therefore decided to delegate her son’s care to her aunt and took him overseas where he stayed with her aunt.
2. The mother stated that despite her son being with her aunt overseas, she still has care and control of him because she makes all decisions about his needs through constant contact with her aunt. She provides for all of his financial needs by sending money through family or friends or handing it to her aunt directly. The mother stated that she has instructed her aunt and uncle on issues such as the school the child should attend, which language he has to learn and speak, what kind of toys are appropriate, the clothing he can wear, how and where he spends his holidays and other such matters.
3. Immigration Movement Records provided in June 2014 show that the child, an Australian citizen, had spent most of his time overseas between May 2010 and June 2014. He had returned to Australia for 9 days in November 2010, 49 days between late May 2011 and mid July 2011, 29 days between late March and late April 2012 and 38 days in mid March to late April 2013. The mother had made trips to the country in which the child resided for 14 days in May 2010 returning to Australia on 23 May 2010, 10 days in February 2011, 8 days in late November – early December 2011, 6 days in May 2012, 7 days in March 2013 and 9 days in May 2013. An analysis of the dates by the SSAT showed that in 2010, the mother and child were together for 138 days in either the overseas country or Australia. The mother and child were together for 67 days in 2011, and 35 days in 2012. The SSAT noted that the mother did not dispute the SSAT’s analysis.
4. Notwithstanding only very limited documentation concerning financial support, the SSAT accepted that the mother provided financial support. The Tribunal does not have any further evidence of that support but accepts that on the balance of probabilities, the mother provides financial assistance to her aunt to meet her son’s day to day needs and education. PJCW did not challenge that the mother provided those funds or that she paid for her and her son’s travel and that of her aunt and uncle when they had come to Australia.
5. The Tribunal accepts the mother’s evidence that she was involved in making major decisions about her son’s education and style of upbringing. The Tribunal also finds that the mother delegated daily physical care of her son to her aunt on and after 23 May 2010.
6. PJCW submitted that *decision-making cannot be conflated with “caring”*. PJCW submitted that in view of the child’s age when he moved overseas into the care of his great aunt, there needed to be consideration of the necessary requirements for care of an infant or toddler which were different to those in *Polec* and *P*. In the submission of 12 December 2014, these were said to include preparing his meals and feeding him, settling the child into bed and getting up with him during the night if he was unsettled, changing his nappies and toilet training him, dealing with behavioural issues, interpreting his needs, dressing him, comforting him and treating him when he is sick or hurt and related matters. Other matters included supervising his activities, keeping the child safe, protecting him from physical or other danger, playing with him and so on. At paragraph 31 of the submission, PJCW stated:

In the Applicant’s submission, the statutory concept of “care” applicable to an infant would not be met by mere decision-making, no matter how regular. Nor would it be met by merely receiving information about the child, again, no matter how regularly. Nor would it be met in circumstances of physical absence, nor mere provisions of funds. And nor would it be met by delegation; in the applicant’s submission, the particular needs of an infant entail that “care” or [sic] her or him would be given by a person who is directly proximate to her or him.

1. PJCW’s counsel submitted that the Full Court decision in *Sea Shepherd Australia Limited v Commissioner of Taxation* (2013) 212 FCR 252; [2013] FCAFC 68 (*Sea Shepherd*) provides guidance in this matter. The case involved consideration of whether the organisation was providing *short-term direct care* to animals and it therefore could be considered to provide deductible gift recipient status. Paragraph 34 of the judgement of Gordon J with whom Besanko J agreed, concerned the relevant principles in looking at whether relevant care was provided:

The relevant principles

34. The general principles of construction of a statute were not in dispute. For present purposes, it is sufficient to record that they were identified by the Tribunal and may be summarised as follows:

1. The task is to construe the language of the statute, not individual words: …

2. The task is not to pull apart a provision, or composite phrase within a provision, into its constituent words, select one meaning, divorced from the context in which it appears, and then reassemble the provision:… Indeed, it is rare that resort to a dictionary will be of assistance in searching for the legal meaning of a provision in a statute: …

3. As Gleeson CJ said in XYZ v Commonwealth at [19]:

There are many instances where it is misleading to construe a composite phrase simply by combining the dictionary meanings of its component parts.

…

4. The text of the provision is to be construed according to the context “by reference to the language of the instrument viewed as a whole”: …In the present case, the word “care” is to be construed in the context of the composite phrase of which it forms part, being “short-term direct care”, in the context of the rest of the specific paragraph and in the context of para (b) of Item 4.1.6. Similarly, the phrase “animals without owners” is to be construed in context.

1. PJCW’s counsel, in his Outline of Submissions dated 12 December 2014, stated at paragraphs 26 and 27:

26. Consistently with the approach mandated by Sea Shepherd, the Act’s concept of “care” is to be construed in context and so that the concept may be applied harmoniously throughout the Act – relevantly, throughout the provisions identified above. In the applicant’s submission, that involves acceptance that:

26.1 “Care” must be able to be quantified with a reasonable degree of precision (and so by some objectively-ascertainable indicia), so that the percentage ratings in s 5(3) have useful work to do;

26.2 “Care” must be construed consistently with the statutory concept, in s 7B of an “eligible carer”, that is a person able to meet that statutory description;

26.3 “Care” must be construed in a way applicable to the entire range of children contemplated by the Act; and

26.4 “Care” must be construed consistently with the concept of “actual care” in s 54A which, in its contemplation of nights spent “in the care” of a particular person.

27. The only useful content that exercise yields, however, is that in view of s 54A, an “eligible carer” must be a person who is closely involved – analogously with providing physical accommodation on a given night – in the relevant child’s “care”. Whether that threshold is met then becomes an evaluative exercise to be performed in light of the Guide and authorities like Polec and P, to the extent of their relevance.

1. The mother’s solicitor provided a response to the applicant’s counsel’s submissions. He submitted that PJCW’s *submissions present no cogent reason/s for the Tribunal to depart from the SSAT decision*. In his written submission dated 12 January 2015, he suggested that the Tribunal should follow the decision of Wigney J in *P* in relation to s 54A of the Act:

11. As addressed by Wigney J in P v Child Support Registrar [2013] FCA 1312 (**P v Registrar**), section 54A of the Child Support Assessment Act:

provides guidance for the Registrar in working out the actual care and extent of care that a person has of a child.

12. The conclusion reached by his Honour was that it would be nonsensical to apply the section in cases where the child was not in the care of either parent. This was similarly found in P v Child Support Registrar and Anor [2014] AATA 229. As it is agreed that [the child] was not under the direct care of either parent while …[overseas], it is similarly necessary to move away from section 54A’s guidance.

1. The solicitor suggested that PJCW has presented *an interpretation of the* *statutory concept of* care *… that fails to analyse the relevant facts*. He went on to comment that:

20. Further, the primacy of the child’s wellbeing must be intrinsic to any evaluation of the occurrence or otherwise of a “child support terminating event”. The Child Support Assessment Act’s Second Reading Speech provides insight into the intended operation of the Act, with Mr Fitzgibbon posing the following rhetorical question:

In most cases, non-custodial parents are in the workforce and are able to contribute towards the financial support of their children. Why should such parents have the right to turn their backs on their children and expect the Commonwealth to pick up the responsibility and support their children?

…

22. Contrary to considering the importance of the welfare of children in applying the Child Support Assessment Act, [PJCW’s] submissions embark on a semantic discussion of the statutory concept of “care”.

1. PJCW’s counsel submitted in response that the semantic exercise of what constitutes *care* is precisely what this case is about and that the Tribunal should not be distracted by emotional arguments concerning the child.
2. In considering s 54A and the guidelines, the Tribunal notes that the child spent more than 65 per cent of his nights on and after 24 May 2010 with his great aunt overseas. After the CSA made its decision that there had been a *child support terminating event*, the child’s great aunt lodged an application with the CSA stating that she was a non-parent carer of the child providing 80 per cent of the child’s care with the mother providing 20 per cent in the relevant period. The decision in relation to that application is not before this Tribunal.
3. The Tribunal accepts PJCW’s submission that the concept of *care* should be consistent throughout the Act and that sections 7B, 5(3) and particularly 54A of the Act are relevant in considering what constitutes care. The Tribunal is of the view that consideration of the nights in care, as set out in s 54A, is an appropriate way to determine this matter. Had the great aunt been taking care of the child in Australia while the mother worked, there would be a different answer. The Tribunal accepts that the visa system partly led to the mother’s decision to have her aunt care for her child but that does not change the facts of this matter. The Tribunal concurs with the original delegate that the mother was not taking care of the child while he was living overseas and the mother was in Australia. The child’s great aunt had him in her care on more than 65 per cent of the nights after 23 May 2010. The great aunt physically took care of the child while the mother remained in Australia. The child and mother spent only brief periods together after 23 May 2010.
4. The Tribunal believes it appropriate to take into account the criteria set out in the Guide in determining whether the child was in the mother’s care. The Tribunal has already found that the mother met the child’s financial needs and made major decisions about his upbringing. However, it was the child’s great aunt who provided accommodation, child care, emotional support, supervision and the like. The child was too young to provide for his own needs.
5. While the mother may well have provided for the child financially and set general directions for his upbringing and activities, that is not sufficient in the Tribunal’s view to find that she had *actual care* of him. The Tribunal accepts PJCW’s submission that there is quite a different set of requirements for caring for a child from the age of one over the next few years than those set out in *Polec* and *P* for children of an older age. The Tribunal gives considerable weight to the fact that it was the child’s great aunt who physically cared for him on a day to day basis. The child spent most nights with his great aunt overseas while his mother was in Australia. That factor outweighs the financial contribution and general directions about upbringing provided by the mother.
6. The Tribunal finds that the child was in the care of his great aunt for more than 65 per cent of nights on and after 23 May 2010 until his return to Australia which the Tribunal was advised occurred before the start of this school year. The Tribunal further finds that the mother was not an eligible carer after 23 May 2010 when a *child support terminating event* occurred.

# Decision

1. The Tribunal sets aside the decision under review and substitutes a decision that the joined party had less than 35 per cent care of the child on and after 23 May 2010, the date of a child support terminating event, resulting in the joined party ceasing to be an eligible carer of the child and hence no longer entitled to child support payments.

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| I certify that the preceding 34 (thirty -four) paragraphs are a true copy of the reasons for the decision herein of Regina Perton, Member |

.............................[sgd]...........................................

Associate

Dated 24 June 2015

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| Date of hearing | **20 March 2015** |
| Counsel for the Applicant | **T Smyth** |
| Solicitors for the Applicant | **Farrar Gesini Dunn** |
| Advocate for the Respondent | **N Anawati** |
| Solicitors for the Other Party | **Jackson Lalic Lawyers** |