**Cini and Secretary, Department of Social Services (Social services second review) [2021] AATA 3656 (14 October 2021)**

Division: GENERAL DIVISION

File Number: 2021/6934

Re:

 APPLICANT

And Secretary, Department of Social Services

 RESPONDENT

# Decision

Tribunal: **Senior Member D. J. Morris**

Date: **14 October 2021**

Date of written reasons: **20 October 2021**

Place: **Melbourne**

Pursuant to section 29(7) of the *Administrative Appeals Tribunal Act 1975,* and not being satisfied that it is reasonable in all the circumstances to extend time, the Tribunal refuses to extend time in respect of the application lodged on 25 September 2021.

........................................................................

Senior Member D. J. Morris

**Catchwords**

PRACTICE AND PROCEDURE – where applicant requests extension of time to lodge application – where substantive application seeks review of start date for disability support pension – where eligibility for disability support pension is not in dispute – where applicant previously requested extension of time – where previous application to extend time granted – where applicant subsequently withdrew substantive application – where applicant then lodged new request for extension of time and new substantive application – where period of time beyond statutory 28-day period has significantly elapsed – where no substantive relief available to applicant – no utility in Tribunal considering substantive application – Tribunal refuses to extend time – written reasons provided

**Legislation**

Administrative Appeals Tribunal Act 1975 (Cth) ss 29(7), 33A, 43

Social Security Administration Act 1999 (Cth) s 13

### Cases

*Mehta and Secretary of State for the Home Department (1975) 2 All ER 104*

*Negri v Secretary, Department of Social Services (2016)* 70 AAR 103

# REASONS FOR DECISION

**Senior Member D. J. Morris**

**20 October 2021**

# Preliminary

1. In *Mehta and Secretary of State for the Home Department* (1975) 2 All ER 1084, Lord Denning MR said, at [1088]:

We often like to know the outline of the case. If it appears to be a case which is strong on its merits and which ought to be heard, in fairness to the parties, we may think it is proper that the case should be allowed to proceed, and we extend time accordingly. If it appears to be a flimsy case and weak on its merits, we may not extend the time. We never go into much detail on the merits, but we do like to know something about the case before deciding whether or not to extend time.

# The interlocutory hearing

1. On 14 October 2021, the Tribunal held an interlocutory hearing by telephone, as permitted under section 33A of the *Administrative Appeals Tribunal Act 1975* (‘the AAT Act’) to consider a request by the Applicant, Ms Angela Cini, that time be extended for her to lodge an application for the Tribunal to review a decision dated 15 July 2019 of Member Moreland in the Social Services and Child Support Division of the Tribunal. The Member had affirmed a decision that Ms Cini should be paid Disability Support Pension (‘DSP’) from 29 June 2017 but not an earlier date. This will be called the ‘July 2019 decision’.
2. At the interlocutory hearing, Ms Cini spoke for herself and made submissions. Mr Brian Sparkes represented the Respondent. The Tribunal had regard to the reasons Ms Cini included in her request for extension of time and for the written submissions from the Respondent opposing the extension of time.
3. The Tribunal made an oral decision and subsequently provided a written decision in short form to the parties. In the interests of providing a fuller explanation of the decision, these written reasons are now provided to the parties under section 43(2) of the AAT Act.

## The written reasons

1. In *Negri v Secretary, Department of Social Services* (2016) 70 AAR 103 (‘*Negri’*), Bromberg J considered a matter before the Tribunal where an oral decision had been made and a statement of written reasons had been subsequently supplied. In considering the extent to which the Tribunal could edit or elaborate its oral reasons when producing written reasons, His Honour said at [27]:

… as long as the reasoning remains consistent, there can be no objection to the provision of a more-elaborate exposition of the same reasoning that was orally explained. What is not permissible is altered or new reasoning. The Tribunal is not permitted to substantially divert from the reasoning upon which its decision was made, but is permitted to explain that reasoning differently and, in doing so, is required to address the matters specified in s 43(2B).

1. In preparing the written reasons which follow, the Tribunal is satisfied that they reflect the oral reasons given on 14 October 2021, consistent with the approach suggested in *Negri*. New reasoning for the decision has not been introduced, but this written statement is a fuller explanation of the reasons given orally.

## The claim for DSP

1. Ms Cini was granted Newstart Allowance from 11 April 2016. On 29 June 2017, she contacted the Department of Human Services (now called Services Australia) about claiming DSP. On 7 July 2017, Ms Cini followed up this contact by lodging a written claim for DSP.
2. On 25 January 2018, the Department rejected Ms Cini’s claim. Ms Cini sought an internal review of this decision.
3. On 28 August 2018, the Department wrote to Ms Cini saying that the decision to reject her claim for DSP was incorrect and that she would be paid DSP from 29 June 2017.
4. Ms Cini was in receipt of Newstart Allowance and said during her oral submissions that she knew that when she had been granted DSP as backdated, the payments would be reduced by the amount of Newstart Allowance she had received during the period.
5. An Authorised Review Officer (‘ARO’) of the Department found that the DSP payable to Ms Cini for the period from 29 June 2017 to 22 August 2018 was $29,267.62. The amount of Newstart Allowance the Applicant had received in the same period was $18,364.22. Ms Cini was therefore to be paid $10,903.41. This amount was paid in two tranches: $8,462.65 was paid on 31 August 2018 and $2,420.76 was paid on 3 September 2018. The ARO found that no arrears were due.

## The law relating to a ‘deemed’ claim

1. Section 13 of the *Social Security Administration Act 1999* (‘the Administration Act’) allows a claim to be *‘deemed’* to have been made where a person has made contact with the Department and then lodges a claim for the particular benefit, and the person is eligible for the claim. Section 13(1)(d) provides that a person must lodge a claim within 14 days of making contact with the Department.
2. Section 13 of the Administration Act goes on to say that in certain circumstances the Secretary of the Department has the discretion to allow a claim where a person has made contact and has lodged a claim more than 14 days *but not more than 13 weeks* after that contact but there are medical or special circumstances that made it not reasonably practicable for the person to have lodged the claim earlier.
3. Ms Cini stated that she had documents that confirmed she had first made contact in relation to DSP on 11 July 2016. She provided a photograph of a document, apparently a printout, which is hard to read. Ms Cini had circled some text. As best I can make it the circled text says, against the date 11 July 2016 *“assess DSP claim for NSA”* .
4. Even if I was satisfied that there was evidence to accept a contact date, as claimed by the Applicant, of 11 July 2016, there is no evidence that Ms Cini lodged a claim for DSP within the period 13 weeks thereafter. That *‘deemed claim’* period, which could have potentially enlivened the discretion available to the Secretary (or the Tribunal, standing in his shoes) to consider special circumstances – even if I were to accept it could be taken to have started on 11 July 2016 – ended on 10 October 2016.

## The course of the matter in the Tribunal

1. As mentioned above, on 15 July 2019, the Social Services and Child Support Division of the Tribunal (‘first tier review’) affirmed a decision of 5 February 2019 that the Applicant should be paid DSP from 29 June 2017.
2. On 10 January 2020, the Applicant applied for review by the General Division of the Tribunal (‘second tier review’) of the July 2019 decision, and for an extension of time to lodge that application for review.
3. On 20 February 2020, a Deputy President of the Tribunal, noting the Respondent did not oppose the extension of time, extended time for the Applicant to lodge the application for review.
4. On 28 March 2020, the Applicant withdrew that application for review.
5. On 25 September 2021, the Applicant lodged a further application for second tier review of the July 2019 decision and an application for an extension of time to lodge that application for review.

## Is it reasonable in all the circumstances to extend time?

1. The application for review lodged on 25 September 2021, was lodged some two years beyond the 28-day statutory time period provided for review of the July 2019 decision, a time period which would have ended on or about 23 August 2019. Ms Cini did not provide any explanation for the delay other than generalised comments about her medical conditions. The Respondent submitted that she had rested on her rights.
2. The Tribunal, after hearing submissions from the Applicant and the Respondent, found because of the provisions of section 13 of the Administration Act and on the evidence before it that there is no provision for the earlier payment of DSP to the Applicant than the effective date of 29 June 2017 (i.e. the date which was accepted by the Respondent she first contacted the Department claiming DSP and then followed up with a written claim eight days later). Even if I were to extend time and allow the substantive application to be lodged, there is no relief that can be given to the Applicant. Therefore, I found there is no utility in her substantive application.

# DECISION

1. Pursuant to section 29(7) of the *Administrative Appeals Tribunal Act 1975*, and not being satisfied that it is reasonable in all the circumstances to extend time, the Tribunal refuses to extend time in respect of the application lodged on 25 September 2021.

|  |
| --- |
| 1. *I* *certify that the preceding 23 (twenty-three) paragraphs are a true copy of the written reasons for the decision of Senior Member D. J. Morris*
 |

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

Associate

Dated: 20 October 2021

|  |  |
| --- | --- |
| Date of interlocutory hearing: | **14 October 2021** |
| Applicant: | **Self-Represented** |
| Advocate for the Respondent: | **Mr Brian Sparkes**  |
| Solicitors for the Respondent: | **Services Australia**  |