

PO Box 131 Wynnum 4178



63 Bay Terrace
Wynnum
QLD 4178

Reference: 404 538 728K

Office Hours: MON TO FRI 8.30AM - 4.30PM, WED 8.30AM - 1.30PM

Telephone: 132468

24 March 1997

Mrs Helen L Lewis
7 Albicore Dr
THORNLANDS QLD 4164

Monday

About Your Parenting Allowance

Dear Mrs Lewis

I am writing to you about your Parenting Allowance.

We are not able to pay you Parenting Allowance any more. This is because, according to the information we have you do not have a partner. If you have not already done so, please contact us to see if there is another form of assistance that is more appropriate for you.

The decision to cancel your Parenting Allowance has been made under section 951P of the Social Security Act 1991.

Please read the back of this letter carefully. It tells you about your Social Security rights.

If you have any questions about your Social Security payments, please contact us at the address or telephone number at the top of this letter.

Yours sincerely
K Webster
Regional Manager

ANNEXURE II.)

5th Floor, 380 Queen Street Brisbane, 4000
(GPO Box 9943 Brisbane, 4001)
Phone: (07) 3005 6200 Free Call: 1800 011 140
Fax: (07) 3005 6215 E-mail: brisbane@ssat.gov.au



2 July 2010
Reference Number: B42237
Case Manager: Brent Lawrence

Mr Edwin Lewis
1824 Creek Rd
CANON HILL 4170

Dear Mr Lewis

YOUR DECISION IS ENCLOSED

Your appeal has been decided and a copy of the written decision is enclosed. We have also sent a copy of this decision to Centrelink. A decision summary follows.

- | | |
|------------------------|--------------------|
| 1. Payment Type: | Family Tax Benefit |
| Decision Under Review: | Rate |
| SSAT Decision: | Affirmed |
| 2. Payment Type: | Family Tax Benefit |
| Decision Under Review: | Debt Recovery |
| SSAT Decision: | Affirmed |

You have a further right of appeal to the Administrative Appeals Tribunal (AAT) if you disagree with the decision. An AAT appeal must be lodged within 28 days of receipt of the SSAT decision. Information on how to lodge an appeal with the AAT can be found at <http://www.aat.gov.au> or by contacting the AAT on 1300 366 700.

Yours sincerely

Robin Harvey
Business Manager

Information contained herein is "protected information" by virtue of section 23 of the Social Security Act 1991. IF YOU ARE NOT THE INTENDED RECIPIENT PLEASE CONTACT THE SSAT ON 1800 011 140 to arrange for the documents to be collected from you. Section 204 of the Social Security (Administration) Act 1999 prohibits an unauthorised person from disclosing, recording or otherwise using "protected information" and, if you do so, you may render yourself liable to prosecution and conviction for a serious criminal offence, attracting a penalty of imprisonment for a substantial period, a fine or both.

ANNEXURE 11.2

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Information on the Administrative Appeals Tribunal

Queensland / Northern Territory

You (and Centrelink) can appeal to the Administrative Appeals Tribunal (AAT) if you disagree with the SSAT's decision. The AAT is not connected to Centrelink or the SSAT.

Applying to the AAT

You must apply to the AAT within 28 days of the SSAT decision being delivered to your last known postal address. You can request an extension of time from the AAT, giving details of your reasons.

Application forms are available from the AAT, or you can apply by writing a letter to the AAT. Your letter should include:

- Your full name;
- Your home and postal addresses;
- Your telephone number(s);
- The date and details of the decision;
- A copy of the decision (if available);
- The reference number of the decision;
- The name of the person who made the decision; and
- The reason(s) why you believe the decision is wrong.

Contacting the AAT

For further information, contact the AAT on:

Phone: 1300 366 700 (local call cost) or (07) 3361 3000

Fax: (07) 3361 3001

TTY: 1800 650 662 from anywhere in Australia (no cost)

Internet: www.aat.gov.au

Office Location

Level 4, Commonwealth Law Courts Building
Cnr North Quay and Tank Streets, Brisbane

Postal Address

GPO Box 9955
Brisbane Qld 4001

Assistance

Legal Aid, Welfare Rights or a community legal centre may be able to help you with your application. The AAT can give you information on these organisations.

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REASONS FOR DECISION

HISTORY

1. Mr Lewis was in receipt of family tax benefit. Centrelink decided to raise and recover a debt of \$1,328.87 family tax benefit paid from 4 March 2001 to 30 June 2001.
2. On 24 December 2002 an authorised review officer in Centrelink affirmed the decision. Mr Lewis was advised of this outcome in a letter the same day.
3. Centrelink's case is set out in the letter from the authorised review officer and supporting notes and is summarised as follows:
 - Mr Lewis's sons were in his care pursuant to shared care Family Court orders made on 21 April 1999.
 - According to an affidavit of Mr Lewis dated 5 September 2001 and provided to the Family Assistance Office on 17 April 2002, Mr Lewis has not had his sons in his care after 4 March 2001.
 - Because Mr Lewis did not have the children in his care from 4 March 2001, he cannot be paid family tax benefit from that date.
 - The overpayment is a debt owing to the Commonwealth.
 - There were no grounds to waive recovery of the debt.
4. Mr Lewis appealed to the Tribunal on 20 May 2010.

ISSUES

5. The issues for the Tribunal to determine are:

- (i) Whether Mr Lewis been paid family tax benefit in excess of his entitlement; and if so;
- (ii) Whether the amount of the excess payment is a debt; and if so;
- (iii) Whether the debt is to be recovered.

INFORMATION PROVIDED AT HEARING

6. Mr Lewis came to the Tribunal hearing.
7. Copies of the following documents were provided to the Tribunal.
 - Suncorp bank statements 1 March 2010 to 12 March 2010.

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- Affidavit dated 16 October 2002.
- Letter from Helen Carty (ex-wife) dated 9 February 2009.
- Letter to Kevin Rudd, Prime Minister, dated 15 March 2009.
- Centrelink payment summary 1 July 2002.
- Taxation notice of assessment 20 December 2002.
- Child support account details 20 May 2002.
- Letter from Child Support Agency re tax refund 26 November 2009.
- Authority to care for child dated 3 June 2008.

8. The following is a summary of the information provided:

- He does not dispute he has not seen his boys since March 2001. He last saw them for four hours on 24 March 2001, unsupervised, for Justin's birthday.
- He was meant to have his boys pursuant to Family Court orders.
- His boys were the apparent victims of child abuse by his ex-wife's father. He was acting to try and protect the boys from abuse. His father in law was never charged.
- He had a religious experience with God. He has been sent to explain to the world that "these are the end of time."
- He was hospitalized for a period and was without income for some 12 months. He is not now under medical care. He does not need it. *NOT CORRECT
I WAS ONLY IN HOSPITAL FOR ABOUT 2 WEEKS!*
- It is unfair that he has to repay the debt, given the boys were meant to be with him.
- Under current Family Court orders, he can see the boys supervised. He is not prepared to do that. He should be entitled to see them unsupervised.
- They can take away his boys but not his faith.
- Apart from the Centrelink debt, he had a large child support debt. His liability was worked out on income figures which were no longer correct. In addition, late payment penalties were imposed. On 12 March 2010, the Child Support Agency took \$4,586.78 from his bank account leaving him with about \$3,000 to live off and run his business. It had also taken his tax refund. He was eventually able to have about \$2,800 in late payment penalties wiped from the account.
- He has entered into an agreement with Centrelink to repay the debt at \$60.00 a fortnight.

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[Signature]

12. The Tribunal notes that Mr Lewis has faced significant debt issues with the Child Support Agency and Centrelink relating to his children. The Tribunal can appreciate his sense of unfairness in that he considers his boys have been unlawfully removed from his care but faces significant debts relating to their care.
13. The child support debt has apparently now been finalised. It is a question of law whether he has a Centrelink debt and whether it has to be repaid.

FINDINGS OF FACT

14. On the basis of the evidence before it, the Tribunal made the following findings:

- (i) Mr Lewis is the father of Justin, Clinton and Thomas.
- (ii) Apart from birthday contact of four hours on 24 March 2001, Mr Lewis last had his sons in his care on 4 March 2001 pursuant to Family Court orders made 21 April 1999.
- (iii) Mr Lewis is self-employed in a lawn mowing and house maintenance business.
- (iv) Mr Lewis has had significant business reversals involving loss of a major client and has at present a modest income after expenses of \$250 a week. He lives at home with his parents rent free.
- (v) He has discharged a significant child support debt to the Child Support Agency relating to his children.

APPLICATION OF THE LAW AND REASONS

15. The relevant legislation is contained in the *Family Assistance Act 1999* (the Act) and the *Family Assistance (Administration) Act 1999* (the Administration Act).
16. Where a child is in the care of two adults at different times, the rate of family tax benefit can be split between the two adults (section 59 of the Act). This is what was originally happening in respect of Mr Lewis' children after he separated from his then wife. In determining entitlement to family tax benefit, orders relating to the care of the children are given first importance.
17. It is not the case, however, that a person can receive family tax benefit simply because there is a court order placing the children in their care. The children must as well be in their actual care. Mr Lewis did not have his boys in his care after 4 March 2001.
18. Section 22 of the Act provides as follows:

22 When an individual is an FTB child of another individual

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20. In summary, as applied to Mr Lewis' situation, this provision means that if he is taking reasonable steps to have the children returned after they have been unlawfully removed from his care, he remains entitled to his share of family tax benefit for 14 weeks. On the evidence before the Tribunal, the Tribunal is not satisfied either that the children were unlawfully removed from his care or that reasonable steps were taken to seek their return. In his affidavit of 5 September 2001, Mr Lewis refers to the fact that on 16 March 2001 he had a religious experience which was real, misunderstood and that God was with him. He had a battle with Satin(sic)/devil in which he and God were Supreme. The outcome for his faith was obviously right and proper but unfortunately it appears that this incident may have been at least indicative of the reasons why he was denied further contact with his children at such time. His Family Court affidavit of 5 September 2001 as a step taken to regain care of his children was a step taken more than 14 weeks after contact with the children ceased.
21. This means that Mr Lewis was not entitled to family tax benefit after 4 March 2001 and as a consequence he was overpaid from that date. The Tribunal is satisfied that Centrelink has correctly calculated the overpayment.
22. The overpayment received by Mr Lewis is a debt under section 71 of the Administration Act which states:

Overpayment

71(2) If:

- (a) an amount (the received amount) has been paid to a person by way of assistance; and
 - (b) the received amount is greater than the amount (the correct amount) of assistance that should have been paid to the person under the family assistance law;
- the difference between the received amount and the correct amount is a debt due to the Commonwealth by the person.

23. In some circumstances a debt must or can be waived.
24. Under section 97 of the Administration Act, a debt arising solely because of administrative error must be waived where the payment has been received in good faith and recovery would cause severe financial hardship. The debt in this case has not resulted from administrative error. It happened because Mr Lewis continued to receive payments in circumstances where the children were no longer in his care.
25. Discretion exists to waive recovery of a debt in special circumstances. Section 101 of the Administration Act states:

Waiver in special circumstances

101 The Secretary may waive the right to recover all or part of a debt if the Secretary is satisfied that:

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Australian Government

Child Support Agency

GPO Box 9815
MELBOURNE VIC 3001
www.csa.gov.au

Telephone: 131 272 Toll free. Mobile and public phones extra.
Facsimile: 1300 309 949

Mr Edwin LEWIS
1824 Creek Road
CANNON HILL QLD 4170

Our Reference: 412 036 069 079

Issue Date: 8 March 2011

Child Support Payer Transaction Statement for the period 17/03/1997 to 08/03/2011

Summary

Balance at 17/03/1997	Total Debits	Total Credits	Balance at 08/03/2011
\$0.00	\$51,522.08	\$51,567.08CR	\$45.00CR

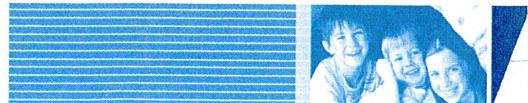
BALANCE SUMMARY as at 8 March 2011

Account	Case	Amount
Excess Cash		\$45.00CR
BALANCE		\$45.00CR

Account Adjustments are marked by an asterisk (*). For details refer to the end of the transaction statement.

Date	Detail	from:	to:	Case No	Amount	Balance
Balance as at						
13 May 1997	Child Support Adjusted			749369	\$135.77	\$135.77
13 May 1997	Child Support Adjusted			749369	\$275.50	\$411.27
31 May 1997	Child Support	01 May 1997	31 May 1997	749369	\$275.50	\$686.77
13 Jun 1997	Penalty, For Amount Overdue				\$10.59	\$697.36
27 Jun 1997	Child Support	01 Jun 1997	30 Jun 1997	749369	\$275.50	\$972.86
13 Jul 1997	Penalty, For Amount Overdue				\$14.27	\$987.13
13 Aug 1997	Penalty, For Amount Overdue				\$14.27	\$1,001.40
13 Sep 1997	Penalty, For Amount Overdue				\$14.27	\$1,015.67
01 Oct 1997	Child Support Adjusted			749369	\$25.14	\$1,040.81
17 Oct 1997	Penalty, For Amount Overdue				\$14.27	\$1,055.08
31 Oct 1997	Child Support	01 Oct 1997	31 Oct 1997	749369	\$382.64	\$1,437.72
10 Nov 1997	Payment Received			749369	\$88.00CR	\$1,349.72
15 Nov 1997	Penalty, For Amount Overdue				\$19.02	\$1,368.74
28 Nov 1997	Child Support	01 Nov 1997	30 Nov 1997	749369	\$382.64	\$1,751.38
09 Dec 1997	Penalty For Late Payment Reduced				\$10.59CR	\$1,740.79
09 Dec 1997	Penalty For Late Payment Reduced				\$14.27CR	\$1,726.52
09 Dec 1997	Penalty For Late Payment Reduced				\$14.27CR	\$1,712.25
09 Dec 1997	Penalty For Late Payment Reduced				\$14.27CR	\$1,697.98
09 Dec 1997	Penalty For Late Payment Reduced				\$14.27CR	\$1,683.71
09 Dec 1997	Penalty For Late Payment Reduced				\$19.02CR	\$1,664.69
<i>Continued on next page</i>						\$1,664.69

ANEXURE 11.3



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\$1,664.69

Date	Detail	from:	to:	Case No	Amount	Balance
09 Dec 1997	Private Payment Credited			749369	\$1,116.00CR	\$548.69
15 Dec 1997	Child Support Adjusted			749369	\$453.17	\$1,001.86
15 Dec 1997	Child Support Adjusted			749369	\$453.17	\$1,455.03
15 Dec 1997	Child Support Adjusted			749369	\$453.17	\$1,908.20
15 Dec 1997	Child Support Adjusted			749369	\$453.17	\$2,361.37
15 Dec 1997	Child Support Adjusted			749369	\$453.17	\$2,814.54
16 Dec 1997	Payment Received			749369	\$440.00CR	\$2,374.54
31 Dec 1997	Child Support	01 Dec 1997	31 Dec 1997	749369	\$835.81	\$3,210.35
13 Jan 1998	Penalty, For Amount Overdue				\$39.59	\$3,249.94
22 Jan 1998	Penalty For Late Payment Reduced				\$4.93CR	\$3,245.01
22 Jan 1998	Payment Received			749369	\$352.00CR	\$2,893.01
30 Jan 1998	Child Support	01 Jan 1998	31 Jan 1998	749369	\$835.81	\$3,728.82
09 Feb 1998	Penalty For Late Payment Reduced				\$13.45CR	\$3,715.37
09 Feb 1998	Child Support Adjusted			749369	\$160.17CR	\$3,555.20
09 Feb 1998	Child Support Adjusted			749369	\$160.17CR	\$3,395.03
09 Feb 1998	Child Support Adjusted			749369	\$160.17CR	\$3,234.86
09 Feb 1998	Child Support Adjusted			749369	\$160.17CR	\$3,074.69
09 Feb 1998	Child Support Adjusted			749369	\$160.17CR	\$2,914.52
09 Feb 1998	Child Support Adjusted			749369	\$160.17CR	\$2,754.35
09 Feb 1998	Child Support Adjusted			749369	\$160.17CR	\$2,594.18
14 Feb 1998	Payment Received			749369	\$961.10CR	\$1,633.08
14 Feb 1998	Penalty, For Amount Overdue				\$22.57	\$1,655.65
27 Feb 1998	Child Support	01 Feb 1998	28 Feb 1998	749369	\$675.64	\$2,331.29
13 Mar 1998	Penalty, For Amount Overdue				\$21.78	\$2,353.07
18 Mar 1998	Penalty For Late Payment Reduced				\$9.73CR	\$2,343.34
18 Mar 1998	Payment Received			749369	\$695.20CR	\$1,648.14
30 Mar 1998	Penalty For Late Payment Reduced				\$0.11CR	\$1,648.03
30 Mar 1998	Penalty For Late Payment Reduced				\$0.11CR	\$1,647.92
30 Mar 1998	Penalty For Late Payment Reduced				\$0.11CR	\$1,647.81
30 Mar 1998	Child Support Adjusted			749369	\$7.92CR	\$1,639.89
30 Mar 1998	Penalty For Late Payment Reduced				\$21.10CR	\$1,618.79
30 Mar 1998	Penalty For Late Payment Reduced				\$22.46CR	\$1,596.33
30 Mar 1998	Penalty For Late Payment Reduced				\$11.94CR	\$1,584.39
30 Mar 1998	Child Support Adjusted			749369	\$117.67CR	\$1,466.72
30 Mar 1998	Child Support Adjusted			749369	\$275.50CR	\$1,191.22
30 Mar 1998	Child Support Adjusted			749369	\$275.50CR	\$915.72
30 Mar 1998	Child Support Adjusted			749369	\$275.50CR	\$640.22
30 Mar 1998	Child Support Adjusted			749369	\$293.00CR	\$347.22
30 Mar 1998	Child Support Adjusted			749369	\$293.00CR	\$54.22
30 Mar 1998	Child Support Adjusted			749369	\$293.00CR	\$238.78CR
30 Mar 1998	Child Support Adjusted			749369	\$293.00CR	\$531.78CR
30 Mar 1998	Child Support Adjusted			749369	\$293.00CR	\$824.78CR

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\$824.78CR