



How Child Support and Family Assistance decisions interact

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30 August 2022



Acknowledgment of Country

Welfare Rights & Advocacy Service (WA) acknowledges the traditional custodians of the land and pays its respect to the elders past, present and future for they hold the memories, traditions, the cultures and the hopes of Australia's First Peoples. Welfare Rights & Advocacy Service (WA) recognises the richness and diversity of Aboriginal and Torres Strait Islander culture.

The question

My client's family tax benefit (FTB) has been cancelled or their rate has been reduced following a Child Support decision about percentage of care

- Why has the decision been made?
- How do I challenge this?

Child Support and FTB A and FDV

When there has been FDV the perpetrator often continues to use the systems – child support and Centrelink – to exert control and power over the other person. Some examples:

- ▶ Person is fearful of claiming CS but does not know they can ask for a maintenance exemption;
- ▶ There is a CS assessment but the payer is not paying the full amount
- ▶ The perpetrator continuously advises child support they have an increased percentage of care when they are not providing any care
- ▶ The perpetrator claims they have made cash payments for items not agreed or unnecessary or that the child can only use at the perpetrator's house;
- ▶ They pay all the child support in the last month of the financial year causing an FTB debt;
- ▶ They refuse to do tax returns or do tax returns for a number of years at once
- ▶ They or their family/friends use Centrelink's tip-off line to tell Centrelink the person is working or a member of a couple

Who makes decision?

Child Support

Family Court

Centrelink (Services Australia/Family assistance office)

How Child Support can affect a person's FTB A rate

► Maintenance Action Test

To be paid more than the base rate of FTB A the person has to:

- Apply to child support for an assessment OR
- Get a maintenance exemption.

If the other parent or their family/friends threaten harm to the person the child or their family if they claim CS ask to see a Centrelink SW or an Indigenous Service Officer (ISO) as soon as possible.

If the other parent denies they are the child's parent – so long as the person is taking reasonable maintenance action they can continue to be paid FTB A at above the base rate

How Child Support can affect a person's FTB A rate

- ▶ Maintenance Income Test
- ▶ This includes

The amount in the CS assessment (unless the person is on the disbursement method or has a maintenance exemption)

Payments collected by Child Support

Non-agency payments that the payer advises the CS they have paid

Non-cash housing maintenance

Capitalised maintenance

Spousal maintenance

How Child Support can affect a person's FTB A rate

▶ Method of collection of ongoing CS payments

There are 3 ways to receive CS:

- Self management – can only be paid the base rate
- Private collect – where there is FDV this is unlikely to be the best option
- Child support collect – how this affects a person's FTB rate depends on whether the person is on (a) the modified entitlement method (the default method) or (b) the disbursement method

Once a client understands how each works they can decide which is best for them

How Child Support can affect a person's FTB A rate

► Mandatory continuous adjustment of FTB

This occurs if a potential overpayment is identified during a financial year due to:

- revised income estimate
- increase in maintenance assessment
- payment of CS arrears

The rate of FTB will be reduced (possibly to \$0) for the remainder of the financial year to minimise the debt at the end of the year

How Child Support can affect a person's FTB A rate

- ▶ Decisions about the percentage of care each person has
 - 13% or less – required to pay child support and not entitled to FTB
 - 14 – 34% - child support is based on percentage of care but not entitled to FTB
 - 35-65% - amount of child support required to be paid is based on percentage of care as is the entitlement to FTB
 - 66 – 100% not require to pay child support and entitled to receive 100% of FTB

Decisions about percentage of care

- ▶ From 1 July 2010 an assessment of shared care made by either Centrelink (family assistance) or CS will have effect for the other agency in relation to care periods that begin on or after this date.
- ▶ The Guides state that CS and Centrelink use the same rules to verify shared care but in our experience this is not always the case.

Decisions about percentage of care

- ▶ Where there is no:
 - Written agreement
 - Family law order
 - Parenting plan or parenting order or
 - Custody order

then unless the parents agree on the percentage of care the decision maker has to establish a pattern of care to work out how much time the child spends with each person.

Disputes about percentage of care

- ▶ When assessing actual care percentages evidence may be obtained from a range of sources
- ▶ Often the first the client knows about a CS decision changing the percentage of care is when they see that their rate of FTB has reduced.
- ▶ As Centrelink has made a decision about the person's rate of FTB they can ask Centrelink to review this decision - even if Centrelink say that the reason for the change is because of a decision by Child Support.

Review of percentage of care decisions by Centrelink

- ▶ If the decision affects the person's rate of FTB they should ask for a review by an authorised review officer (ARO)
- ▶ There are different (complicated) rules about the date of effect of review decisions and even though an ARO decision about percentage of care will also apply for child support purposes there are different date of effect rules for each

Review of percentage of care decisions by Child Support

- ▶ People affected by a percentage of care decision made under the Child Support Act can object and the Registrar will make a decision
- ▶ The usual rule is that if the objection is lodged more than 28 days after the person was notified of the percentage of care decision and the Registrar's decision is in their favour then the date of effect will be the date the objection was lodged.

Review of decision - AAT

- ▶ A person who disagrees with an ARO decision or the Registrar's decision about percentage of care can apply for a review at the Social Security and Child Support division of the AAT (AAT 1).
- ▶ If the AAT 1 has already reviewed an ARO decision about percentage of care then the AAT cannot vary this decision if a review is sought under the child support legislation
- ▶ A person dissatisfied with an AAT 1 decision can apply to the General Division of the AAT (AAT 2)