



WELFARE RIGHTS & ADVOCACY SERVICE

Appealing Decisions - Family Tax Benefit Payments

This fact sheet provides general information about appealing decisions about Family Tax Benefit (FTB) Payments. These decisions are made by the Family Assistance Office (FAO) under *A New Tax System (Family Assistance)* legislation.

Centrelink staff make decisions about Family Tax Benefit payments on behalf of the FAO.

For information about appealing Centrelink decisions see the factsheet - **Appealing Decisions - Centrelink**.

The law is complex and FAO staff can sometimes make incorrect decisions. Decisions made about Family Tax Benefit Part A will often affect Child Care Payments. You will need to appeal the decision about your Child Care entitlements at the same time that you appeal a decision about your Family Tax Benefit Part A. For information about appealing Child Care Payments see the factsheet - **Appealing Decisions - Child Care Payments**

What Decisions can be appealed

You have the right to appeal most FAO decisions if you think they are wrong using the Centrelink appeals process.

You cannot request a review of a decision made on the basis of an income estimate that you provided until either after the end of the current financial year or until after the Australian Taxation Officer (ATO) has made an assessment of your and /or your partner's taxable income for that year. So if your family income has decreased don't request a review; instead you should provide a revised estimate of income. If FAO consider the revised estimate of your income is reasonable, they can increase your rate of payment from the date you provided the revised estimate of income.

The following decisions are not reviewable:

- the form and manner of claim;
- the continuation of payment pending review of an unfavourable decision;
- FAO requiring information; or
- Settlement of proceedings before the AAT at a second review.

Debts

In some circumstances there is a risk that you could get a less favourable outcome if the original decision is reviewed. For example, if you are appealing a debt there is a risk that the amount of the debt could increase if there is a finding that it was incorrectly calculated in the first place. You should get advice from a Welfare Rights Centre about your matter before lodging an appeal (to find your closest Welfare Rights Centre go to www.welfare-rights.org.au).

Decision made by other Government Departments

▪ Child Support Agency (CSA)

Since 1 July 2010, the CSA or Centrelink can determine what the percentage of care for a child is in shared care arrangements.

If the decision was made by CSA then it will need to be appealed within the CSA itself.

If the rate of FTB you receive depends on an amount of Child Support that a CSA assessment has outlined you are entitled to and you have been unable to collect this amount, you may need to ask the CSA to collect the child support for you.

▪ Australian Taxation Office (ATO)

If you do not agree with a decision made by the ATO about you or your partner's taxable income you will need to contact the ATO to appeal.

Note: Time limits do apply.

FTB Time Limits

Usually you should request a review by the Centrelink Authorised Review Officer (ARO) of a Family Tax Benefit decision within 52 weeks of being notified of the decision. If you do not request a review in this time period you will not be eligible for payment of arrears if the decision is in your favour.

There are a number of exceptions to the 52 week time limit:

- Reassessments by either the ATO or CSA;
 - you only have 13 weeks to appeal from the time you received the notice of reassessment.
- Past period decisions or decision relating to 2 income years;
 - you have until the end of the income year after the period you are appealing; *or*
 - 52 weeks from when you were notified of the decision *whichever is the later*.
- Child Care decisions have different time limits.

If in doubt lodge a request for a review within 13 weeks of receiving the decision and get advice as soon as you can.

Note: If there were special circumstances that prevented you from meeting the time limits you *may* be able to request an extension of time to lodge your appeal. You should contact your nearest Welfare Rights Service for further information immediately.

Appeal Process

FAO decisions are appealed through the Centrelink Review and Appeals process. For more information about this process, please see the Appealing-Centrelink Decisions and Debts factsheet on our website at www.wraswa.org.au.

The decision should be reviewed by the Centrelink ARO, however sometimes Centrelink will first have the decision reviewed by a Subject Matter Expert (SME). If you do not agree with the SME decision you may need to make a further request for a review by the ARO. You will need to do this within 13 weeks of receiving the SME decision.

You can lodge your appeal in writing at your local Centrelink office or by telephoning 13 6150.

If you want to give Centrelink more information about your circumstances during the appeals process you can take any documents to a Centrelink office and ask them to send a copy to the ARO.

The ARO will send you a written decision which should include their findings of fact, the rules they applied and the reasons for their decision.

First Review by the Administrative Appeals Tribunal

If you are not satisfied with the ARO decision you can ask for a review by the Social Services and Child Support Division (SSCS) of the Administrative Appeals Tribunal (AAT). You need to request a first review by the AAT within 13 weeks of receiving the ARO decision. You can do this by phone, online or by writing to them.

The SSCS division of the AAT will send you a written decision which should include their findings of fact, the rules they applied and the reasons for their decision.

Second Review by the Administrative Appeals Tribunal

You have a further right of review to the General Division of the AAT. The request for this review must be on the *Application for Second Review of Decision* form and made **within 28 days** of you being notified of the SSCS AAT decision.

Further Rights of Appeal

You can appeal General division AAT decisions to the Federal Court but only on a “question of law”, not because you think the AAT got the facts of your case wrong. You should **not appeal** to the Federal Court without seeking legal advice about the chance of success and the possible cost of the appeal. Appeals to a court can be very expensive, as the losing party usually pays the legal costs of the other side, which can be thousands of dollars.

You must appeal to the Federal Court **within 28 days** of getting the AAT decision so you should seek legal advice promptly.

For more detail about the AAT review process see:

- Our factsheet - **Appealing Decisions - Centrelink** which can be downloaded at <http://www.wraswa.org.au/resources/>.
- The **Guide to Social Services and Related Jurisdiction** – a guide which provides assistance on first and second reviews of Centrelink decisions can be downloaded at <http://www.aat.gov.au/resources/practice-directions-guides-and-guidelines>

Resources

If you need legal advice in relation to Centrelink in Western Australia please contact:

- Welfare Rights & Advocacy Service on 08 9328 1751; or
- Sussex Street Community Legal Centre on 08 6253 9500; or
- Fremantle Community Legal Centre on 08 9432 9790.

Fact Sheets

There are a range of fact sheets available from the National Welfare Rights Network and the Welfare Rights Centres across Australia. Visit <http://www.welfare-rights.org.au/factsheets> to see if any of the fact sheets can assist you.

Administrative Appeal Tribunal (AAT)

AAT First stage review application:

- <http://www.aat.gov.au/social-services-child-support-division/applying-for-a-review/how-to-apply>

AAT Second stage review application:

- <http://www.aat.gov.au/applying-for-a-review>

Department of Human Services

- The Department of Human Services Centrelink website has a range of information. <https://www.humanservices.gov.au/customer/dhs/centrelink>.
- Information about Reviews and Appeal for Centrelink and Child Support can be found at <https://www.humanservices.gov.au/customer/enablers/reviews-and-appeals>

Australian Taxation Office (ATO)

Information about appeals or reassessments can be found on their website at <https://www.ato.gov.au/>

Please note: This information contains general information only and is accurate at July 2016. It does not constitute legal advice. If you need legal advice about social security entitlements, please contact your local Welfare Rights Centre/Advocate. Welfare Rights Centres are community legal centres, which specialise in social security law, administration and policy. They are entirely independent of Centrelink. All assistance is free. Contact Welfare Rights & Advocacy Service on (08) 93281751 or by email at welfare@wraswa.org.au